

2 OCTOBER 1946

I N D E X  
Of  
WITNESSES  
(none)

I N D E X  
Of  
EXHIBITS

<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
614		Telegram dated 5 June 1939 from the German Ambassador to the German State Secretary		6792
615		Article Published in Vol. IV of the August 1940 issue of the Tokyo Gazette on the subject of French Indo-China	6794	
615-A		Excerpt therefrom		6794
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617-A		Excerpt therefrom		6817

I N D E X  
Of  
EXHIBITS  
(cont'd)

<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
618		Business Report of South Seas Section in 1940	6822	
618-A		Excerpt therefrom	6822	
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1 Wednesday, 2 October, 1946

2 - - -

3 INTERNATIONAL MILITARY TRIBUNAL  
4 FOR THE FAR EAST  
5 Court House of the Tribunal  
6 War Ministry Building  
7 Tokyo, Japan

8 The Tribunal met, pursuant to adjournment.  
9 at 0940.

10 - - -

11  
12  
13 Appearances:

14 For the Tribunal, same as before.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

17 - - -

18  
19 (English to Japanese, Japanese to  
20 English, French to English and Japanese to  
21 French interpretation was made by the  
22 Language Section, IMTFE.)  
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1 DEPUTY MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: I was hoping the Chief  
4 Prosecutor would be here this morning.

5 (Whereupon, the Chief Prosecutor  
6 entered the courtroom.)

7 Mr. Chief Prosecutor, as you are aware, your  
8 position is entirely different from that of any of the  
9 prosecutors at Nuernberg. You are in charge of the  
10 whole of the prosecution, according to my reading of  
11 this Charter. You are not merely Chief of American  
12 Counsel; you are the Chief Prosecutor in the whole trial,  
13 and every section of it; and there are certain things  
14 that I should like to state to you before we proceed  
15 to deal with the case of Mr. Oneto.

16 In the first place, I desire to emphasize the  
17 fact that we are this morning to deal not with a nation,  
18 not with the French nation, but with an individual who  
19 represents that nation. If a British or American or  
20 Australian or Netherlands prosecutor behaved before  
21 this Court as did Mr. Oneto he would be dealt with in  
22 exactly the same way. No Member of this Tribunal  
23 entertains any national prejudices. I am sure the  
24 gentleman who represents France on this Tribunal does  
25 not think otherwise.

1 As Mr. Oneto will be practically in the  
2 position of a defendant this morning, we will hear  
3 him in his own language, if he desires to speak. He  
4 may, if he thinks fit, speak in English. He has spoken  
5 in English before, and up to a certain stage was  
6 clearly understood by the Court, by the reporters,  
7 and by the interpreters. At a later stage he became  
8 unintelligible to both the court reporters and to the  
9 interpreters; but as far as I am aware, no Member of  
10 the bench failed to understand anything he said in  
11 English.

12 Mr. Chief Prosecutor.

13 MR. KEENAN: Mr. President, since the Presi-  
14 dent of the Court has addressed the Chief Counsel in  
15 this matter, I desire to state that, of course, there  
16 never was any misconception upon the part of the Chief  
17 of Counsel that this Court had the intent to differ-  
18 entiate in any manner as between the nations partici-  
19 pating in this prosecution. And in attempting to fathom  
20 the reason for that statement from the Court, if it  
21 would emanate from any argument of counsel, I would  
22 want to clear it up forthwith because it was never so  
23 intended to make any such observations during the course  
24 of the argument. Any statements pertaining to that  
25 subject had to do with what might be interpreted as the

1 result of the Court's ruling, which I felt would be  
2 quite different from that which the Court would intend  
3 to convey.

4 I am, of course, quite mindful of the pro-  
5 visions of the Charter, which I have studied and  
6 attempted to analyze concerning the duties of the  
7 Chief of Counsel, which I am attempting to perform  
8 in full compliance therewith and will continue to so  
9 do.

10 The Court, the President himself, made it  
11 quite clear to me in Chambers that whatever was to be  
12 said about a matter in Court while Mr. Oneto was  
13 speaking would be one that he himself must refer to in  
14 the court and that the Chief of Counsel would not be  
15 permitted to make any statement with reference thereto.  
16 That is what, Mr. President, you said to me in Chambers.

17 Mr. Oneto is here and in accordance with the  
18 Court's statement that I referred to will now answer  
19 for himself.

20 THE PRESIDENT: One reading the record might  
21 draw the conclusion that there was some suggestion of  
22 discriminatory treatment by this Court. As we left  
23 the bench yesterday Mr. Oneto referred to his "great  
24 country" in terms that suggested that he was defending  
25 its cause here. I do not know enough French to be

1 able to say just what he did remark, but one of my  
2 colleagues who does speak and understand French says  
3 that that was the substance of Mr. Oneto's remark.  
4 Both of us may have misunderstood Mr. Oneto. But that  
5 is one of the reasons why I stressed the fact that this  
6 Court has no prejudice against any nation.

7 Now we would like to hear Mr. Oneto in Eng-  
8 lish or French in explanation of his position.

9 MR. ONETO: (Speaking in French) Mr. President  
10 and Members of the Tribunal: I wish to make an expla-  
11 nation and dissipate a misunderstanding which arose  
12 yesterday through the use of the French language. The  
13 confusion which took place made it impossible for me to  
14 understand that it was the desire of the Court to hear  
15 further argument about the use of the French language  
16 from my learned colleague, the Chief Prosecutor.

17 May I draw the Court's attention to the fact  
18 that the Anglo-Saxon procedure applied by this Court  
19 is very different from the French system. In a French  
20 court the prosecutor himself is a magistrate, and thus,  
21 a member of the court. I wish to make it clear, there-  
22 fore, that no intention of disrespect was implied by  
23 the fact that I continued to speak in the French tongue.  
24 I regret the fact that a misunderstanding arose, and  
25 I can assure the Court of my complete cooperation at

1 all times.

2 I also desire to express my appreciation of  
3 the decision of the Tribunal to allow me to continue  
4 to present my case in the French language.

5 THE PRESIDENT: The Court accepts Mr. Oneto's  
6 explanation. The matter is closed.

7 Mr. Oneto.

8 MR. ONETO: Mr. President, with the authori-  
9 zation of the Court, I wish to continue to use the  
10 French language myself, and I will ask Mr. Tavenner,  
11 my distinguished colleague, to read in English the  
12 documents on which I wish to base my accusations.

13 THE FRENCH MONITOR: Correction: Continue  
14 the presentation of the case in French.

15 MR. ONETO: The Tribunal's attention is  
16 called to prosecution's document 829-B, in evidence  
17 as exhibit No. 512, in which the Vice-Minister for  
18 the Japanese Foreign Affairs announced on March 30,  
19 1939, that Japan had taken administrative jurisdiction  
20 for the Spratley Islands.

21 I offer in evidence prosecution document  
22 4034-D. It is a telegram bearing the date 5 June 1939,  
23 from the German Ambassador in Tokyo to the German  
24 State Secretary.

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution's document  
2 No. 4034-D will receive exhibit No. 614.

3 (Whereupon, the document above  
4 referred to was marked prosecution's exhibit  
5 No. 614, and was received in evidence.)

6 MR. ONETO: It relates to the time that Japan  
7 desired to participate in the war against England and  
8 France. At this time the following accused were in  
9 power: HIRANUMA, Kiichiro, Prime Minister; KIDO, Koichi,  
10 Minister of the Interior; ITAGAKI, Seishiro, Minister  
11 of War; ARAKI, Sadao, Minister of Education; KOISO,  
12 Kuniaki, Overseas Minister.

13 MR. TAVENNER: (Reading) "Telegram (Secret  
14 Cipher Process). Tokyo, 5 June 1939. Arrival, 5 June  
15 1939. Most Urgent!

16 "For the State Secretary. Secret.

17 "The Deputy Minister for War confirmed to me  
18 that the Army--"

19 THE PRESIDENT: Mr. Tavenner, I understood  
20 that this would be read concurrently in Japanese.

21 MR. TAVENNER: I am sorry, sir, I did not  
22 hear you.

23 THE PRESIDENT: I understood that the docu-  
24 ment would be read concurrently in Japanese and that  
25 you would not have to pause.

1 MR. TAVENNER: Yes, sir, and that is my under-  
2 standing.

3 May I ask the translators if they are ready  
4 to proceed with the simultaneous translation of the  
5 document when read in English? It is not necessary to  
6 read it in French.

7 THE JAPANESE MONITOR: Mr. Tavenner, we are  
8 prepared to give the Japanese simultaneously.

9 MR. TAVENNER: If your Honor please, I will  
10 begin again.

11 (Reading) "Telegram (Secret Cipher Process).  
12 Tokyo, 5 June 1939. Arrival, 5 June 1939. Most urgent!  
13 "For the State Secretary. Secret.

14 "The Deputy Minister for War confirmed to me  
15 that the Army and Navy had come to an understanding.  
16 However, he added, weakening, that the Army had not  
17 prevailed in all matters. Informant of the Foreign  
18 Ministry let me know that the Premier and the Foreign  
19 Minister have assented to the understanding, forwarding  
20 of which to BERLIN and ROME is impending. Participa-  
21 tion in the war against ENGLAND and FRANCE has been  
22 conceded, though still with certain reservations by  
23 which JAPAN wishes to secure the right to choose a  
24 favorable time for entering the war."

25 I shall omit reading the rest of that telegram.

Signed "Ott."

If your Honor please, may I ask the translation pool if they are prepared at this time to let go over the IBM system simultaneously Mr. Oneto's remarks? That is, in French and in Japanese -- in English and in Japanese.

THE INTERPRETER: Mr. Tavenner, the interpreters' pool are prepared, provided there are no objections from the defense. If there is an objection, will you kindly give us the time to get set; then we can do it.

MR. ONETO: I offer in evidence prosecution document 1529-F. This is an article published in Volume IV of the August 1940 issue of the Tokyo Gazette on the subject of French Indo-China. It relates to the transportation of war materials through Indo-China to China.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution's document No. 1529 will receive exhibit No. 615 for identification; and the excerpt therefrom, bearing document No. 1529-F, will receive exhibit No. 615-A.

(Whereupon, document No. 1529 was marked prosecution's exhibit No. 615 for identification only. Document No. 1529-F was marked prosecution's exhibit No. 615-A, and was received in evidence.)

1 MR. TAVENNER: (Reading)

2 "TOKYO GAZETTE -- August, 1940

3 "Volume IV -- No. 2

4 "FRENCH INDO-CHINA

5 "Bureau of Information, Department of Foreign  
6 Affairs

7 "On the 12th of June, this year, the  
8 Japanese expeditionary forces in South China issued  
9 an announcement in which they pointed out the fact  
10 that the greater part of the weapons and war mater-  
11 ials purchased abroad by the Chiang Kai-shek regime  
12 were still being transported from Haiphong to Chung-  
13 king by the Haiphong-Yunnan railway, and that they  
14 could not overlook such action of the authorities  
15 of French Indo-China in aid of the Chiang regime." --

16 THE PRESIDENT: Mr. Tavenner, I am told by  
17 one of my brother Judges that nothing is going over  
18 in Japanese.

19 MR. TAVENNER: May I ask the pool if they are  
20 ready for simultaneous translation in Japanese with  
21 my reading of the English text of the document?

22 THE MONITOR: Mr. Tavenner, the pool is now  
23 prepared to go on.

24 THE PRESIDENT: We expect the language  
25 section to tell you, Mr. Tavenner, to tell us all

1 whether they are ready to read Japanese at the same  
2 time as you read English; otherwise we will have  
3 these interruptions from time to time.

4 MR. TAVENNER: In the reading of the docu-  
5 ments I will look for a signal from the Japanese  
6 section of the translation pool to see if you are  
7 ready to proceed so that I do not start ahead of you.

8 Continuing to read from the fourth line--

9 THE PRESIDENT: Mr. Tavenner, that red  
10 light is on.

11 MR. TAVENNER: Continuing to read at the  
12 fourth line from the end of the first paragraph:  
13 "Further, on the 16th of the same month, the Japanese  
14 forces again called the attention of the French  
15 authorities to the matter, expressing their firm res-  
16 olution to put an end to this hostile action on the  
17 part of the French colonial authorities.

18 "Through the Japanese Ambassador at Paris,  
19 Mr. Renzo Sawada, and the French Ambassador at Tokyo,  
20 Mr. Charles Arsene-Henry, the Japanese Government  
21 also had frequently requested the French Government  
22 to reconsider the matter, and on the 19th of June the  
23 Vice-Minister of Foreign Affairs, Mr. Masayuki Tani,  
24 made a strong representation with regard to the pro-  
25 hibition of transportation through Indo-China of

1 materials and goods in aid of the Chungking regime,  
2 requesting at the same time that the French Govern-  
3 ment consent to the dispatch of Japanese inspectors  
4 for the purpose of making investigations of actual  
5 conditions on the spot. On the 20th the French  
6 Ambassador called on the Vice-Foreign Minister and  
7 stated that the French Government had, since the 17th  
8 of June, prohibited the transportation of such com-  
9 modities as gasoline and trucks to China, but that in  
10 view of the repeated representations of the Japanese  
11 Government it had decided to forbid the transportation  
12 of an extremely wide range of materials and goods  
13 and that it had no objection to the sending by Japan  
14 of inspectors to French Indo-China. Thus one of the  
15 important routes over which war materials were supplied  
16 to Chungking has been entirely severed."

17 I will omit reading of the document down to  
18 the first paragraph beginning on page four.

19 "It is obvious that Japan, determined as  
20 she is to wipe out, at any cost, all obstructions  
21 to the building of a new order and the establishment  
22 of lasting peace in East Asia, cannot tolerate such  
23 acts as those described, which are detrimental to the  
24 high purpose for which her armies were sent to the  
25 Asiatic mainland. Accordingly the Japanese Government

1 filed energetic protests with the French Government  
2 through the Japanese Ambassador in Paris, Mr. Renzo  
3 Sawada. To this France replied through her Ambassador  
4 in Tokyo, Mr. Charles Arsene-Henry, stating that no  
5 arms were being supplied to Chungking and that gasoline  
6 and trucks could not be regarded except as merchandise  
7 for non-military use. However, immediately following  
8 the outbreak of hostilities in Europe, gasoline and  
9 trucks were declared contraband of war by the British  
10 Government in direct refutation of France's claim.

11 "Exhausted in her patience by this unfriendly  
12 course of action so persistently pursued by the French  
13 colonial authorities, Japan ordered her air-arm at the  
14 end of 1939 to bomb the Yunnan Railway. France pro-  
15 tested; but Japan insisted that, as she considered  
16 gasoline and trucks in the same category as other war  
17 contraband, there would be no cessation of the attacks  
18 upon that section of the French Railway in enemy  
19 territory until Indo-China showed unmistakable signs  
20 of stopping the arms traffic across her borders.

21 "As the French attitude appeared to persist,  
22 Japan was obliged in February this year to explicitly  
23 demand the discontinuance of the transportation of war  
24 materials making at the same time a proposal to appoint  
25 a number of officers-inspectors to Hanoi and the

1 Chinese boundary to observe the transit of goods from  
2 French territory into Yunnan. Negotiations on this  
3 basis were evaded through some subterfuge or other by  
4 the French authorities and the assistance complained  
5 of continued as of yore.

6 "On June 4, Vice-Foreign Minister, Mr.  
7 Masayuki TANI, made another strong representation to  
8 the French Ambassador in Japan but with no greater  
9 success than hitherto.

10 "However, the recent collapse of French  
11 Arms in the hostilities appears to have had consider-  
12 able effect in correcting the attitude of Indo-China,  
13 so that by special agreement concluded between Japan  
14 and the Government of that territory, the latter under-  
15 took to cease all aid to Chiang Kai-shek. A Japanese  
16 military mission under Major General Issaku NISHIHARA  
17 was at the same time dispatched to Hanoi, the members  
18 of which were to be stationed in that capital city,  
19 at Haiphong, and at various points along the territorial  
20 borders to see that the understanding was observed.  
21 A solution has therefore been found at least for the  
22 time being to the very thorny problem that arose between  
23 the two countries which at times assumed proportions  
24 that threatened to aggravate the tense feeling between  
25 the two countries."

1 MR. PRESIDENT: Mr. Logan.

2 MR. LOGAN: If the Tribunal please, before  
3 introducing this subject today, Mr. Oneto stated that  
4 these documents were being offered at a time when  
5 Marquis KIDO was Minister of the Interior. I assume  
6 he meant Home Minister, and the document he just read  
7 states August, 1940. I wish to advise the Tribunal  
8 that the record clearly shows that Marquis KIDO resigned  
9 on August 30, 1939. Mr. Oneto also referred to Mr.  
10 ARAKI being Minister of Education during this period  
11 of time and Mr. McManus, counsel for Mr. ARAKI, advises  
12 me that Mr. ARAKI resigned as Minister of Education  
13 also in the latter part of 1939.

14 MR. ONETO: I offer in evidence prosecution  
15 document No. 1027-B.

16 THE PRESIDENT: I take the corrections by  
17 the defense as admitted?

18 MR. ONETO: Mr. President, I ask permission  
19 of the Court to examine this book and give a reply  
20 later this afternoon.

21 THE PRESIDENT: You have that permission.

22 MR. ONETO: This is a Business Report for  
23 the year 1939 published in December, 1941, by the  
24 South Seas Bureau and relates to the China affair and  
25 French Indo-China. It describes Japanese-French

1 Indo-China relations during the year 1939 on such  
2 occasions as the bombing of the Yunan railway, the  
3 Japanese occupation of Hainan Island, Spratley  
4 Islands and the Paracels, and the negotiations  
5 regarding commercial traffic between French Indo-  
6 China and the Chungking government.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document  
9 No. 1027 will be marked exhibit No. 616 for identifi-  
10 cation only and No. 1027-B will be marked exhibit  
11 No. 616-A.

12 (Whereupon, document No. 1027 was  
13 marked prosecution's exhibit No. 616 for  
14 identification only.

15 Document No. 1027-B was marked  
16 prosecution's exhibit No. 616-A and was re-  
17 ceived in evidence.)

18 MR. TAVENNER: I will read exhibit 616-A:

19 "Business Report of 1939 published by the  
20 Board of South Seas 1941.

21 "Section 3. The China Affair and French  
22 Indo-China.

23 "Item 1. The readjustment of diplomatic  
24 relations between Japan and French Indo-China in regard  
25 to the bombing of the Yunan Railway and the transport

1 of munitions via French Indo-China.

2 "(a) Japan's decision to bomb the Yunan  
3 Railway.

4 "Our negotiations with France for prohibiting  
5 the transport via French Indo-China of munitions des-  
6 tined for Chiang Kai-shek were continued from the  
7 previous year. Our side patiently and prudently  
8 urged time and again reconsideration of the matter  
9 by the French so that the issue might be settled  
10 peacefully by voluntary measures from the French.  
11 However, the French while speaking of maintaining  
12 strict neutrality in the China Affair and of enforcing  
13 a policy of prohibiting the transportation of arms  
14 destined for Chiang Kai-shek, tolerated the trans-  
15 portation via French Indo-China of large quantities  
16 of arms for Chiang Kai-shek, which would promote  
17 Chiang's resistance powers on the pretext that such  
18 goods had been already contracted for. To our repre-  
19 sentations of displeasure of October 26 of the prev-  
20 ious year, the French not only denied the fact of  
21 arms transportation, but also refused to adopt the  
22 measures we demanded, declaring that this was a  
23 definite answer. In the final analysis, the situation  
24 was such that our side had no alternative but to bomb  
25 the Yunan Railway. In the beginning of December 1938

1 the Japanese Naval authorities, stating that, whereas  
2 they had recognized some time ago the operational  
3 necessity of bombing the Yunan Railway, asked for  
4 this Ministry's opinion in order to draw up a united  
5 plan of the Navy and Foreign Ministries in regard to  
6 this case on the occasion of the transfer of the  
7 high officers of the Japanese Expeditionary Forces in  
8 South China. Thereupon we immediately studied the  
9 various conditions, such as the legal question of  
10 defending this bombing, the efficacy of the bombing,  
11 and its influence on our international relations,  
12 especially on the attitude of France. As the result  
13 of inquiring into its advantages and disadvantages,  
14 we reached the following conclusion: that the fact  
15 that the Yunan Railway is being used for the military  
16 purpose of aiding China justifies under international  
17 law its bombing by our side, and, our country will not  
18 be liable to indemnity for its destruction; that the  
19 operational and political effects of the bombing will  
20 be very great; and that the influence it will have on  
21 France and also Britain and the United States will  
22 not necessarily be alarming. After obtaining the  
23 approval of the Minister, Chief ISHIZAWA of the Third  
24 Section of the European and Asiatic Bureau replied  
25 orally on December 9 to Lt. Commander KAMI of the Navy

1 Ministry as follows: 'As for the Foreign Ministry,  
2 it considers that there is no objection to the bombing  
3 of the Yunan Railway within Chinese territory in so  
4 far as the Army and Navy require it from an operational  
5 standpoint.' At the same time SUGIMURA, Ambassador to  
6 France, was advised by telegraph to that effect and  
7 instructed to explain the justification for the bomb-  
8 ing and make appropriate rejoinders to any protests  
9 which the French might make in case the bombing was  
10 carried out.

11 "(b) The growth of opportunity for adjusting  
12 Franco-Japanese relations in the light of the serious  
13 war situation in Europe.

14 "As stated above, the Franco-Japanese  
15 negotiations regarding the issue of the transportation  
16 of arms via French Indo-China had come to a stand-  
17 still. Moreover, the relations between the two coun-  
18 tries had been lacking in harmony over various issues  
19 which had been pending since the outbreak of the China  
20 Affair, such as the French rejection of the agreement  
21 of our Ambassador to France, our occupation of Hainan  
22 Island, the declaration of our possession of the  
23 SHINNAN GUNTO, our territorial claim on the Paracels  
24 Islands, and the prohibition of the export of iron  
25 ore from French Indo-China. However, since the

1 conclusion of a Soviet-German Non-Aggression Pact,  
2 and especially after the outbreak of the European War,  
3 the attitude of the French Government and people  
4 toward Japan had greatly improved. This tendency  
5 was manifested not only in the editorial tones of  
6 the French press, but in the acts of the French  
7 Government, which at the end of August hastily acceded  
8 to our demands on the three pending issues, namely,  
9 the export of iron ore from French Indo-China, the  
10 establishment of a Japanese consulate at Noumea, and  
11 the passage through French Indo-China of the regular  
12 air-line between Japan and Thailand. Furthermore,  
13 in the early part of September France, saying that  
14 she heartily wished to arrive at an understanding with  
15 Japan on the basis of their traditional peaceful  
16 policy sounded our opinion about the initiation of  
17 Franco-Japanese conversations for the purpose of  
18 settling all pending issues. Moreover, the acting  
19 Governor-General of French Indo-China stated to Consul-  
20 General SUZUKI at Hanoi" -- SUZUKI is not the accused  
21 SUZUKI -- "that, if Japan would really pursue a policy  
22 of non-intervention in the European War, France would  
23 respond to it by adopting a conciliatory policy toward  
24 Japan. Thus the French Government gradually began to  
25 address itself actively to the adjustment of Franco-

Japanese relations.

1                   "(3) Our first proposal regarding  
2       diplomatic rapprochement. (Conversation between  
3       Minister NOMURA and French Ambassador HENRI of Nov.  
4       30)

5                   "Taking advantage of this tendency, Minister  
6       NOMURA decided to solve favorably at a stroke the  
7       various problems pertaining to the French dependencies,  
8       especially French-Indo-China, which had important  
9       bearings on the disposition of the China Incident and  
10      the establishment of the East Asiatic New Order. On  
11      Nov. 30, he summoned the French Ambassador in TOKYO  
12      and told him as per the following: (A) Of our in-  
13      tentions concerning Japan-French diplomatic rapproche-  
14      ment desired by the French, and also as per the  
15      following (B) pertaining to the dispatching to HANOI  
16      of a Staff member of our home department and a military  
17      expert for liaison and negotiation in connection with  
18      the suspension of acts to help Chiang through French-  
19      Indo-China. The French Ambassador promised to transmit  
20      the matter to his home Government and give a definite  
21      answer later on, as he could not reply on the spot.  
22      (A) Since the outbreak of the China Incident, Japan-  
23      French diplomatic relations have lacked amicability,  
24      but the fact that the French recently complied with  
25

1 our requests in regard to a few pending matters is  
2 greatly appreciated by us. We thoroughly sympathize  
3 with recent French expressions of desire to readjust  
4 mutual relationship between the two countries.

5 "However, it is a matter beyond our appre-  
6 hension that the French, while desiring diplomatic  
7 rapprochement on one hand, is assisting the Chiang  
8 regime on the other, for the overthrow of which we  
9 are straining every effort. If diplomatic rapproche-  
10 ment with us is actually desired, we consider that  
11 the French should give up such dubious attitude and  
12 break with the Chiang regime and also take a sympa-  
13 thetic attitude toward our settlement of the China  
14 Incident. Further, it is a well-known fact that the  
15 French dependencies in the South Seas and Oceania,  
16 especially French-Indo-China are maintaining various  
17 economic barriers against us. Unless such fundamental  
18 obstacles for mutual friendly relationship be actually  
19 removed, we deem it impossible to bring about the  
20 realization of mutual diplomatic rapprochement.

21 "Regarding the acts of aiding Chiang via  
22 French-Indo-China, large quantities of munitions  
23 destined for the Chiang regime are still being trans-  
24 ported via French-Indo-China despite our repeated  
25 requests to stop them. Traffic of anti-Japanese

1 Chinese with military and political objectives is  
2 frequent, with the result that French-Indo-China  
3 has apparently become the base of aid-Chiang and  
4 anti-Japanese activities. The French-Indo-China  
5 authorities explain that although traffic of regular  
6 arms and ammunitions is prohibited, the other commod-  
7 ities cannot be barred even if they are serviceable for  
8 military purpose, so long as they are transported as  
9 general merchandise. But the fact is beyond doubt  
10 that even regular arms and ammunitions are being trans-  
11 ported as heretofore. With regard to foodstuff,  
12 trucks, petroleum and various machinery, although  
13 they do not fall under the category of regular arms  
14 and ammunitions, they invariably tend to keep and  
15 enhance the anti-Japanese fighting strength so long  
16 as they are applied to the Chiang regime."

17 I will omit reading the next paragraph.

18 "Our current military operation in KUANGHSI  
19 is due to the continued transportation of munition and  
20 other commodities destined to KUANGHSI, despite our  
21 frequent protests. The reason for the trespassing of  
22 the French-Indo-China border line and the dropping of  
23 bombs by Japanese military aircrafts, as frequently  
24 protested by the French during the past few months, is  
25 that CHENNAMKUAN in Chinese territory near the border

1 line has become the distribution center of munitions  
2 consigned to the Chiang regime transported via French-  
3 Indo-China. For strategic military reasons, there  
4 was no alternative but to resort to bombing with the  
5 result that some of our military aircraft may inevit-  
6 ably have trespassed the border or accidentally dropped  
7 bombs. Such undesirable affairs would cease to happen,  
8 should the French stop aiding Chiang."

9 I will omit down to the last paragraph on  
10 page four:

11 "(B) In connection with our current KUANGHSI oper-  
12 ations, it appears that the French authorities are  
13 entertaining uneasiness and suspicion in view of our  
14 army's sphere of activity extending near the border  
15 of French-Indo-China. In order to dispel the un-  
16 easiness or suspicion, and also for liaison and  
17 negotiation between the Japanese consul-general in  
18 HANOI and the French-Indo-China authorities, we wish  
19 to dispatch to HANOI within a few days an official-in-  
20 charge for the Foreign Ministry for a few days. He  
21 shall be accompanied by a military expert of field  
22 officer class to inform the French authorities of our  
23 military activities in South China and to hear the  
24 French viewpoint regarding the situation in the border  
25 districts. We thus hope to come to a better

1 understanding. We therefore hope that the Ambassador  
2 would consent to our intention and transmit the  
3 matter to the French Local authorities so that neces-  
4 sary conveniences and assistances would be afforded.

5 "(4) The French interim reply to our  
6 proposition (the conversation between Minister NOMURA  
7 and French Ambassador HENRI of Dec. 12). At the  
8 second interview of the two on Dec. 12, the French  
9 made the following intermediate reply.

10 "(1) The French Government deeply regrets  
11 that the Japanese Government again gave vent to dis-  
12 satisfaction at the alleged transportation via French-  
13 Indo-China of munitions destined to China, which  
14 report was previously denied and proven as entirely  
15 groundless by the French.

16 "(2) Regarding the various pending matters  
17 such as the occupation of HAINAN island, the annexa-  
18 tion of SHINNAN archipelago, the obstruction of  
19 navigation on the YANTZE River, the infringement on  
20 commercial freedom in the occupied territory, and all  
21 the other damages sustained by the French interests  
22 in China, the French Government has no objection to  
23 the intention of the Japanese Government to have a  
24 conference with the French Government to exchange  
25 frank opinions.

1           "(3) Inasmuch as there is a Japanese consul-  
2       general stationed in HANOI, it is beyond apprehension  
3       that there should be any necessity of specially dispatch-  
4       ing a staff member of the Foreign Ministry and a mili-  
5       tary expert to French-Indo-China. Needless to say, the  
6       French Government would have no objection to the Japa-  
7       nese Government dispatching couriers in order to ar-  
8       range for special contact with the consul-general in  
9       question.

10           "(4) The military operations of the Japanese  
11       Army in Kuanghsi districts are liable to contradict  
12       the political equilibrium, which was the object of  
13       the Japan-French agreement of 1907. The French Govern-  
14       ment wants the Japanese Government's explanation on  
15       the object, nature and the duration of the operations.

16           "In reply to the above proposition, Minister  
17       NOMURA told the French Ambassador as follows:-

18           "(1) According to information received by  
19       us, it is a plain fact that munitions are being  
20       transported via French-Indo-China. For instance, the  
21       information recently received from reliable sources  
22       in China confirms the fact that the CHUNGKING Govern-  
23       ment, in view of our military operations in KUANGSHI  
24       requested French assistance to have its military  
25       material and other stuff stocked in that district

1           "(3) Inasmuch as there is a Japanese consul-  
2 general stationed in HANOI, it is beyond apprehension  
3 that there should be any necessity of specially dispatch-  
4 ing a staff member of the Foreign Ministry and a mili-  
5 tary expert to French-Indo-China. Needless to say, the  
6 French Government would have no objection to the Japa-  
7 nese Government dispatching couriers in order to ar-  
8 range for special contact with the consul-general in  
9 question.

10           "(4) The military operations of the Japanese  
11 Army in Kuanghsi districts are liable to contradict  
12 the political equilibrium, which was the object of  
13 the Japan-French agreement of 1907. The French Govern-  
14 ment wants the Japanese Government's explanation on  
15 the object, nature and the duration of the operations.

16           "In reply to the above proposition, Minister  
17 NOMURA told the French Ambassador as follows:-

18           "(1) According to information received by  
19 us, it is a plain fact that munitions are being  
20 transported via French-Indo-China. For instance, the  
21 information recently received from reliable sources  
22 in China confirms the fact that the CHUNGKING Govern-  
23 ment, in view of our military operations in KUANGSHI  
24 requested French assistance to have its military  
25 material and other stuff stocked in that district

1 sent back temporarily to French-Indo-China. The  
2 source confirms that the French promised to make  
3 favorable arrangements to a certain extent.

4 "(2) The Japanese Government is fully aware  
5 that since war has not been declared by neither Japan  
6 nor China, the French is not legally obligated to  
7 suspend traffic of commodities consigned to China.  
8 But the Japanese Government earnestly hope that the  
9 French would recognize the extensive hostilities now  
10 under way between Japan and the CHUNGKING Government  
11 and take steps to suspend the freight traffic via  
12 French-Indo-China, which tends to help the CHUNGKING  
13 Government."

14 THE PRESIDENT: This is a convenient break.  
15 We will recess now for fifteen minutes.

16 (Whereupon, at 1045, a recess was  
17 taken until 1100, after which the proceedings  
18 were resumed as follows:)  
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1 MARSHAL OF THE COURT: The Tribunal is now  
2 resumed.

3 THE PRESIDENT: Mr. Oneto. That means you,  
4 Mr. Tavenner. You are only just reading for him.

5 MR. TAVENNER: If it please the Tribunal,  
6 I will begin reading at near the middle of page 6,(3).

7 (Reading): "(3) The military operations in  
8 KUANGHSI are executed in parallel with the blockade  
9 of the Chinese coast line to bring about the collapse  
10 of the CHUNKING Government by cutting off the com-  
11 missary line. Consequently until these aims are  
12 realized, the duration cannot be definitely stated.

13 "Notwithstanding the foregoing explanations,  
14 the French Ambassador repeatedly emphasized the absence  
15 of munitions traffic to China via French-Indo-China.  
16 Since the premise of solving the Japanese-French  
17 diplomatic rapprochement was the suspension of  
18 munitions traffic, a divergence of opinions already  
19 existed."

20 I will omit down to Item 2.

21 (Reading continued):

22 "The dropping of bombs on THA KHE, French  
23 Indo-China by Japanese Navy Planes.

24 "When Acting Consul-General URABE at HANOI  
25 called on Chief Administrator DE TASTE in the after-

1 noon of August 26, 1939 /SHOWA 14/ at the latter's  
2 request, the Chief Administrator informed him,  
3 after remarking that the protest was being made  
4 under instructions from the Home Government, that  
5 about 11:00 a.m. of the 26th Japanese seaplanes  
6 flew over French Indo-China territory from the  
7 direction of the Chinese border and that one of  
8 these planes dropped two bombs in the vicinity of  
9 THA KHE near the border of French Indo-China and  
10 China, causing about thirty casualties.

11 "With reference to this, Consul-General  
12 SUZUKI, in an interview with the Governor-General  
13 of French Indo-China on September 25, expressed the  
14 Japanese Government's regret and its desire for a  
15 local settlement of the incident. The Governor-  
16 General appreciated it and requested that negotiations  
17 regarding indemnity be conducted with the Director  
18 of the Political Affairs Bureau.

19 "According to the report of the Consul-  
20 General of October 14, the Governor-General made a  
21 written demand /for indemnity/ as follows:

- 22 (1) 50,020 piastres for 76 persons killed  
23 (about ¥ 658 per person)
- 24 (2) 10,410 piastres for 34 wounded persons  
25 (about ¥ 300 per person)
- (3) 550 piastres for 55 lightly wounded persons  
(about ¥ 100 per person)
- (4) 1,570 piastres for burial expenses,

1 survivors' relief fund, and damage com-  
2 pensation.

3 Total 62,550 piastres.

4 "On November 17 the above total indemnity  
5 of 62,550 piastres was advanced by the Foreign  
6 Ministry and remitted by telegraphic transfer to  
7 Consul-General SUZUKI. Subsequently the Consul-  
8 General reported that the Governor-General, in a  
9 letter dated November 29, acknowledged receipt of  
10 this sum and recognized the incident as closed."  
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1 THE PRESIDENT: Dr. KIYOSE.

2 DR. KIYOSE: May I call the attention of the  
3 Court to a certain point with regard to the document  
4 which has just been presented to the Court. The  
5 title of the English text speaks of the Board of the  
6 South Seas. As a matter of fact, this document has  
7 been prepared by the second section of that Board  
8 or that Bureau.

9 THE PRESIDENT: What is the material dif-  
10 ference?

11 DR. KIYOSE: This difference bears upon the  
12 weight of the document. In our country there is a  
13 great difference in weight between a bureau and  
14 sections within a bureau.

15 THE PRESIDENT: That is not a ground of  
16 objection. You may give that in the course of evi-  
17 dence for the defense. The objection is overruled.

18 DR. KIYOSE: Mr. President, this is not an  
19 objection, your Honor; it is merely an attempt to call  
20 the attention of the Court and to make the necessary  
21 revisions in translation.

22 THE PRESIDENT: I told you what it was,  
23 matter for correction by the defense in the course of  
24 giving their evidence. We have heard enough.

25 DR. KIYOSE: There is one other point, your

1 Honor. Will you be good enough to listen to it?

2 THE PRESIDENT: What is your point?

3 DR. KIYOSE: In the subject of this document  
4 the word "published" is mentioned. May I point out  
5 that this document was not published or made public,  
6 but was prepared for use within the Government depart-  
7 ment concerned itself; and I feel that this is a  
8 highly improper word to use in reference to this  
9 document.

10 THE PRESIDENT: Your observation is noted.

11 MR. ONETO: I tender in evidence prosecution's  
12 document 1691. This is a resolution adopted by the  
13 Assembly of the League of Nations on October 6, 1937.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document  
16 1691, to wit, a booklet, "The League of Nations'  
17 Resolutions and Reports on the Sino-Japanese Dispute  
18 Since the LUKOUCHIAO Incident of July 7th, 1937", will  
19 receive exhibit No. 617, for identification only;  
20 and prosecution's document No. 1691, being an excerpt  
21 therefrom, will receive exhibit No. 617-A.

22 (Whereupon, the above-mentioned documents  
23 were respectively marked prosecution's exhibits  
24 Nos. 617 and 617-A, No. 617 being marked for  
25 identification only, and No. 617-A being received

1 in evidence.)

2 MR. TAVENNER: I will read exhibit 617-A.

3 (Reading):

4 "THE LEAGUE OF NATIONS  
5 RESOLUTIONS AND REPORTS  
6 ON  
7 THE SINO-JAPANESE DISPUTE  
8 SINCE  
9 THE LUKOUCHIAO INCIDENT  
10 OF  
11 JULY 7TH, 1937

12 "II. RESOLUTION ADOPTED BY THE ASSEMBLY ON OCTOBER  
13 6th, 1937.

14 "THE ASSEMBLY:

15 "Adopts as its own the reports submitted to  
16 it by its Advisory Committee on the subject of the  
17 conflict between China and Japan (documents A. 78,  
18 A. 79 and A. 80. 1937. VII)

19 "Approves the proposals contained in the second  
20 of the said reports (document A.80. 1937. VII) and re-  
21 quests its President to take the necessary action with  
22 regard to the proposed meeting of the Members of the  
23 League which are Parties to the Nine-Power Treaty  
24 signed at Washington on February 6th, 1922;

25 "Expresses its moral support for China, and  
recommends that Members of the League should refrain  
from taking any action which might have the effect of  
weakening China's power of resistance and thus of in-

1       creasing her difficulties in the present conflict,  
2       and should also consider how far they can individually  
3       extend aid to China;

4               "Decides to adjourn its present session and  
5       to authorise the President to summon a further meet-  
6       ing if the Advisory Committee so requests."  
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1 MR. ONETO: I present prosecution's document  
2 No. 1411 for introduction in evidence. This is a  
3 "Business Report of South Seas Section in 1940"  
4 published by the South Seas Bureau.

5 THE PRESIDENT: Major Furness.

6 MR. ONETO: The report relates to supplies  
7 being furnished to Chiang-Kai-shek and matters con-  
8 cerning the Japanese Occupational Forces in French-  
9 Indo-China.

10 MR. FURNESS: If the Court please, the defense  
11 objects to introduction of this document on the ground  
12 that no certificate of source or authenticity is  
13 attached to either the copies we have or to the  
14 original.

15 MR. ONETO: We have not furnished the certifi-  
16 cate because this document has come from the files and  
17 is an official document of the South Seas Bureau and  
18 that source, itself, proves its authenticity.

19 MR. FURNESS: If the Court please, it is  
20 customary to always furnish such certificates. It  
21 would save these objections if they were furnished.  
22 I make this point because there are many documents  
23 which we now have in this phase to which such certifi-  
24 cates are not attached.

25 THE PRESIDENT: I am not clear why a

1 certificate does not appear with the original. Other  
2 documents -- other prosecution documents of the same  
3 character carry certificates. We know, if you take  
4 the Charter literally, this would be admissible;  
5 but we have been expecting certificates and getting  
6 them, and we see no reason, for the time being, why  
7 certificates should not have been furnished here.

8 MR. TAVENNER: Your Honor, may I be permitted  
9 to make a statement for Mr. Oneto in regard to that  
10 matter.

11 THE PRESIDENT: Now we are hearing two  
12 counsel on the one issue. Let us hear Mr. Oneto in  
13 French, if he desires to speak in French. He can  
14 always change over into English, provided he is  
15 understood by those who should understand him.

16 MR. ONETO: Mr. President, I ask for the  
17 time to find the necessary certificate and to present  
18 it to the Court as soon as I have obtained it.

19 THE PRESIDENT: The objection must be upheld.  
20 You can tender the document again when you have the  
21 certificate, unless you can satisfy us that a certifi-  
22 cate should not be insisted on. You have not done  
23 that so far.

24 MR. ONETO: May I ask that this document be  
25 introduced for identification only?

1 THE PRESIDENT: The document will be marked  
2 for identification.

3 CLERK OF THE COURT: Prosecution's document  
4 No. 1411 will be marked exhibit 618 for identification  
5 only.

6 (Whereupon, the above-mentioned document  
7 was marked prosecution's exhibit 618 for identifi-  
8 cation only.)

9 MR. ONETO: KIDO's Diary has been offered in  
10 evidence for identification only as exhibit No. 178.

11 I now present document 1632-CC.

12 CLERK OF THE COURT: Prosecution's document  
13 No. 1411, being the excerpt from document 1411, is  
14 marked exhibit 618-A for identification only.

15 (Whereupon, the above-mentioned document  
16 was marked prosecution's exhibit 618-A for  
17 identification only.)

18 MR. ONETO: KIDO's Diary has been offered  
19 in evidence for identification only as exhibit No. 178.

20 I now desire to offer in evidence prosecution's  
21 document 1632-CC, which is the entry in KIDO's Diary  
22 of 19 June 1940.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Prosecution's document  
25 1632-CC will receive exhibit No. 619.

1                   (Whereupon, the above-mentioned document  
2 was marked prosecution's exhibit No. 619 and  
3 received in evidence.)  
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1 MR. TAVENNER: I will read exhibit 619.  
2 "Entry from Marquis KIDO's Diary, 19 June 1940."  
3 "19 June 1940."  
4 I will omit the first sentence.  
5 "Had a talk with the Foreign Minister before  
6 and after he was received in audience and discussed  
7 the two plans which were debated at yesterday's Four  
8 Minister Conference relative to the French Indo-  
9 China situation:  
10 "(1) That a request be submitted regarding  
11 the pro-Chiang acts, and in case the request is re-  
12 fused by the French that force be employed;  
13 "(2) That force be employed at once from  
14 the beginning on the idea that negotiation is unneces-  
15 sary.  
16 "The military ministers wanted the second plan  
17 not to be adopted at present. It was their idea to  
18 have the first part of the first plan put into effect  
19 at once, and to decide, after waiting for a reply,  
20 whether to resort to force or not. The above policy  
21 was decided upon.  
22 "Italy and Germany have been informed that  
23 our country is gravely concerned with the French Indo-  
24 China question both from the political and economic  
25 standpoints.

1 "England and America are to be dealt with  
2 after receiving the replies from Germany and Italy."

3 MR. ONETO: The Tribunal's attention is  
4 called to prosecution's document 4025A in evidence  
5 as exhibit No. 520. It is a telegram from the German  
6 Ambassador to the Reich Chancellery in which the  
7 European Department of the Japanese Foreign Ministry  
8 was shown to have requested that the German Govern-  
9 ment make a friendly gesture to Japan by declaring  
10 that Japan would receive a free hand in Indo-China.

11 I desire also to point out from this document  
12 that army circles in Japan stated to the German Amba-  
13 sador that the idea of occupying the strategically  
14 important Yunnan Railway was being propagated.

15 The Tribunal's attention is also called to  
16 prosecution document 4025C, in evidence as exhibit 523,  
17 in which the accused, General KOISO inquired of the  
18 German Ambassador in Tokyo as to what Germany's  
19 attitude would be with regard to the military activity  
20 of Japan in Indo-China and parts of the Netherlands  
21 Indies. The date of this telegram was 24 June 1940.

22 I offer in evidence prosecution document  
23 985A.

24 THE PRESIDENT: Captain Brooks.

25 MR. BROOKS: If the Tribunal please, I think

1 it proper at this time to call to the Tribunal's  
2 attention, from the testimony or the evidence previously  
3 put in as to the record of General KOISO, that he  
4 was the Minister of Overseas Affairs from April 7,  
5 1939, to August 30, 1939, at which time he was relieved  
6 from the above post on his own request, and then on  
7 April 7, 1940, was appointed Minister of Overseas  
8 Affairs again in the YANAI Cabinet and was relieved  
9 on July 22, 1940 when the YANAI Cabinet fell. The  
10 time in July 22, 1940, when he was relieved from his  
11 post as the YANAI Cabinet fell, he became a private  
12 citizen and retired from political and military life  
13 until May, 1942, and that the telegram of July 24  
14 just referred to, two days after his retirement, was  
15 inquired into only in the capacity of a private citizen,  
16 not his official capacity.

17 MR. ONETO: In document 1606, page 8, I read  
18 Overseas Minister; on the next page, page 9, it is  
19 written KOISO, Kuniaki, January 16, 1940; July 22, 1940.

20 THE PRESIDENT: Where are we now? It is  
21 very difficult to follow. I understand he is now  
22 tendering document 9851.

23 MR. ONETO: Mr. President, I was introducing  
24 document No. 985A when the honorable counsel presented  
25 an objection as to document 4025.

1 THE PRESIDENT: No objection was presented;  
2 an explanation was made.

3 Document 985A is admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document --

5 THE PRESIDENT: I understand now that Major  
6 Furness wants to take an objection. I would like  
7 counsel who do intend to take objections not to be  
8 satisfied to stand behind the prosecutor at the lectern  
9 but to come right forward so I will not mistake his  
10 purpose.

11 MR. FURNESS: In the confusion which the  
12 Tribunal mentioned I thought another document was  
13 being discussed.

14 I wish to object to the introduction of this  
15 document because, again, there is no certificate of  
16 source or authenticity attached either to the original  
17 or to the copies furnished to the defense counsel.

18 MR. ONETO: This document is an official  
19 document coming from the South Seas Bureau, an  
20 organization which belongs to the Foreign Office. To  
21 be more precise, it comes from the Second Bureau of  
22 the South Seas Bureau, from the second section.

23 MR. FURNESS: The document is exactly in the  
24 same class as the one on which the Court has just  
25 ruled.

1 THE PRESIDENT: That seems obvious. The  
2 objection is upheld and what I said of the previous  
3 document applies to this.

4 MR. ONETO: I ask the permission of the Court  
5 to introduce it for identification only.

6 THE PRESIDENT: It will be marked for identi-  
7 fication.

8 CLERK OF THE COURT: Prosecution's document  
9 No. 985A will receive exhibit No. 620 for identification  
10 only.

11 (Whereupon, the document above referred  
12 to was marked prosecution's exhibit No. 620 for  
13 identification only.)

14 THE PRESIDENT: This is regrettable because  
15 the chronological order and, perhaps, the logical  
16 sequence of the French case is being interfered with  
17 because these documents cannot be admitted. This is  
18 wholly unrelated to any language difficulty. It is  
19 open to us, but I must consult my colleagues about  
20 it first, to admit these documents subject to the  
21 production of the necessary certificate. I will con-  
22 sult with them during the luncheon adjournment.

23 MR. ONETO: I offer in evidence prosecution's  
24 document 39, supplement. This is a Japanese Foreign  
25

Office statement of 23 September 1940, published in volume 9, July to December 1940, issue of "Contemporary Japan" relating to the French Indo-China negotiations.

THE PRESIDENT: Major Furness.

MR. FURNESS: If the Court please, we make the same objection on the same grounds.

I wish to withdraw the objection, sir. The certificate apparently arrived during the recess and was not attached to my copy.

THE PRESIDENT: Admitted on the usual grounds.

CLERK OF THE COURT: Prosecution's document No. 39 will receive exhibit No. 621.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 621 and received in evidence.)

MR. TAVENNER: I will read exhibit 621.

"The French Indo-China negotiations.

"(1) The Foreign Office Statement, September 23, 1940.

"With a view to settling the China affair and thereby facilitate the establishment of a new order in East Asia, the Foreign Minister Yosuke MATSUOKA, held conversations in a friendly spirit with the French Ambassador, Charles Arsene-Henry, on basic matters regarding the question of French Indo-China at Tokyo

1 during the month of August of this year.

2 "As a result of these conversations, France  
3 agreed to afford in French Indo-China all such facil-  
4 ities of a military nature as are required by the  
5 Japanese Army and Navy for executing their campaign  
6 for the settlement of the China affair.

7 "On the basis of this agreement, negotiations  
8 were conducted on the spot -- at Hanoi -- for the  
9 purpose of deciding upon concrete matters between  
10 the Japanese and French military authorities, which  
11 resulted in an agreement in the afternoon of September  
12 22.

13 "(2) The Foreign Office Spokesman's Statement,  
14 September 23, 1940.

15 "Despite the understanding reached between  
16 Japan and France with regard to French Indo-China after  
17 prolonged negotiations in which Japan manifested con-  
18 sistent patience and forbearance, a local skirmish has  
19 occurred in the border region of French Indo-China.  
20 This is entirely due to a misunderstanding on the  
21 part of French Indo-China. Therefore, it is expected  
22 that the agreement concluded between Japan and France  
23 will be smoothly and peacefully carried out with the  
24 French misunderstanding naturally dispelled.

25 "Inasmuch as the present agreement between

Japan and France has been based on peaceful talks  
between the two countries, there could be no objection to it from any other foreign country."

MR. ONETO: Mr. President, I return now to document No. 1411 and ask to present it conditionally. This is on the condition that we can obtain a certificate of authenticity.

MR. FURNESS: If I understand it, the Court had ruled on that matter that it would discuss it at recess and decide afterward. !

THE PRESIDENT: We would like to hear any argument that the defense have to offer.

MR. FURNESS: Simply that there is no presumption that these are official documents and that it would be a simple matter to furnish us with a certificate if they are. If counsel, as an official of the Court, will make that representation we, of course, have no objective of hampering him, but it would help the defense a great deal if those certificates were furnished with the papers so that when we check them over we will know what we are looking at.

THE PRESIDENT: Well, you have another document that was rejected because of the absence of a certificate.

MR. ONETO: Document 985A.

1 THE PRESIDENT: That is also tendered for  
2 conditional acceptance. The Court will consider the  
3 matter.

4 We will recess now until half past one.

5 (Whereupon, at 1155, a recess was taken.)  
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## AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at  
2 1340.  
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4 DEPUTY MARSHAL OF THE COURT: The International  
5 Military Tribunal for the Far East is now resumed.

6 THE PRESIDENT: I propose to bring on first  
7 the matter of the order made in respect of  
8 defense witnesses. That is a matter of some urgency.

9 Are the prosecution ready to have that matter  
10 dealt with?

11 MR. E. WILLIAMS: If the Tribunal please, so  
12 far as that matter is concerned, the prosecution are  
13 of the opinion that it is a matter between the Court  
14 and the defense with which the prosecution properly have  
15 nothing to do. Consequently, of course, we are prepared  
16 at any time that the matter should be taken on, because  
17 we intend to take no part in any discussion of that  
18 matter unless demanded by the Court.

19 THE PRESIDENT: Mr. Logan.

20 MR. LOGAN: If the Tribunal please, on June 13,  
21 1946, a direction was issued to the General Secretary  
22 which provided among other things that no summons for  
23 the attendance of a witness shall be issued after the  
24 first day of August 1946, unless the President of the  
25 Tribunal otherwise directs for a good cause shown.

1           Your Honor will probably recall that when the  
2 Court recessed because of air conditioning, or, rather,  
3 lack of it, we appeared in your Chambers and suggested  
4 that in view of the fact that Court was adjourned  
5 indefinitely, that that date be advanced. It was  
6 pointed out at that time the date of August 1 was set  
7 because that was the date it was originally contemplated  
8 the prosecution would finish its case; and it was  
9 understood at that time that on or about the time when  
10 the prosecution would finish its case the Tribunal  
11 would set a date on which the last applications for  
12 witnesses and documents could be made, and that date  
13 would probably be at least one month after the prose-  
14 cution finished its case.

15           On January 26, Mr. President, you signed an  
16 order that the accused or his counsel make application  
17 in writing to the Tribunal for the production of  
18 witnesses and documents between the dates of October 7,  
19 1946, and October 28, 1946, the accused to appear in  
20 groups of four.

21           THE PRESIDENT: Not January, surely.

22           MR. LOGAN: September 26.

23           The entire Defense Section is asking that this  
24 order be rescinded or, in the alternative, that it be  
25 modified. It is impossible for the defense to comply

1 with this motion because the prosecution is now on  
2 its seventh phase of the case with approximately seven  
3 more phases to go; so that the accused do not know at  
4 this time what witnesses or documents will be needed  
5 to combat the evidence of the next seven phases; and  
6 even after its own case starts, we do not know at this  
7 time what further documents the prosecution will intro-  
8 duce, and are thus not in a position to tell the  
9 Tribunal at this time what documents we will need.  
10 In many instances the attorneys for the accused have  
11 not even interviewed prospective witnesses and they are  
12 not in a position to know whether or not their testi-  
13 mony will be relevant.

14 We realize, of course, that a somewhat similar  
15 procedure was adopted at Nuernberg, and we understand  
16 the spirit in which this order was made.

17 If the Court should overrule our objections  
18 to the entire order, we respectfully suggest that  
19 certain modifications be made in it.

20 In the first place, the order does not state  
21 whether or not the prosecution will be present. We  
22 ask that the prosecution be barred from participation  
23 in any of these proposed hearings or receive copies  
24 of the record of such hearings. The reason, of course,  
25 for this is quite obvious, that if the prosecution

1 find out in advance what our testimony is going to be  
2 they could govern themselves accordingly on their case.

3 Secondly, we request that any order entered  
4 should contain a provision that no inquiry will be  
5 made with respect to any documents at this time; and  
6 thirdly, that the order be made more flexible so as to  
7 permit an inquiry into the relevancy of testimony of  
8 proposed witnesses only for the phases completed, and  
9 subsequent hearings as the future phases are completed,  
10 and at the Court's discretion during the entire defen-  
11 dants' case; and fourthly, that the order be restricted  
12 to apply to witnesses for whom subpoenas must be issued.

13 As officers of the Court, we presume that the  
14 Tribunal has confidence in the defense attorneys to  
15 produce only such witnesses as it will need to prove  
16 its defense, and we intend to abide by that.

17 I wish to point out that at no time did the  
18 defense ever appear at any hearings where any requests  
19 were made for subpoenas by the prosecution.

20 In the absence of these safeguards which I  
21 have mentioned, the only alternative if this order is  
22 to stand that the defense has would be to require the  
23 prosecution to let us have all of their documents from  
24 now until the end of the case so that we could be pre-  
25 pared to meet them.

1 I believe there are other defense counsel  
2 who would also like to say a word on this subject, your  
3 Honor.

4 THE PRESIDENT: Dr. KIYOSE.

5 DR. KIYOSE: We Japanese counsel also feel  
6 the same as Mr. Logan, who has just appeared before you,  
7 especially with respect to the most important phase  
8 of this trial, namely, the relations of the United  
9 States and Great Britain ; in other words, the Pacific  
10 War, the preparation and waging thereof. Evidence in  
11 connection with this phase has not been brought to  
12 our attention by the prosecution as yet.

13 THE PRESIDENT: There is no need for any  
14 French translation of this.

15 DR. KIYOSE: In view of this fact, we should  
16 like to have the Tribunal, as has been contended by our  
17 associate, Mr. Logan, have the Court give as much  
18 flexibility as possible to this order -- or to this  
19 motion.

20 May I add another point: The prosecution  
21 being one single organization, all prosecutors need  
22 not attend the proceedings daily, and many of them  
23 have sufficient time to go outside in gathering evi-  
24 dences. We defense counsel, whether Japanese or  
25 American, are responsible to one accused. It is,

1 therefore, our obligation not to be absent from this  
2 court for even an hour every day. It is therefore my  
3 ardent request, Mr. President, that after the prose-  
4 cution's case has been completed, the defense be given  
5 sufficient time to assemble its evidence and to sub-  
6 mit, tender, additional evidence as it is able to find.

7 My Japanese colleagues and I have discussed  
8 the matter and feel that it would be quite convenient  
9 if we are permitted approximately one month's time.

10 That is all that I wish to state.

11 THE PRESIDENT: Mr. McManus.

12 MR. McMANUS: Mr. President, speaking for my  
13 individual client, I have at this time a list of  
14 witnesses, and it is a rather large one. However, I  
15 have not had the time to interview these witnesses.  
16 I do not know whether their testimony will be material,  
17 and the most that I personally can do is submit a list  
18 of prospective witnesses and from that prospective  
19 list of witnesses, witnesses will be called actually.

20 It just has been called to my attention that  
21 there are several defense counsel absent that are not  
22 in this country.  
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1 THE PRESIDENT: They are still translating  
2 this into French. We do not require it.

3 MR. McMANUS: (Continuing) and even though  
4 they will be -- we hope that they will return in a  
5 short time, I think that the Tribunal should take this  
6 matter under consideration and extend the time for the  
7 production of this list of witnesses.

8 THE PRESIDENT: Mr. Levin.

9 MR. LEVIN: Mr. President, in connection  
10 with the discussion of my colleagues, we desire a  
11 clarification or some intimation from the Court as to  
12 what our rights may be with reference to documents  
13 processed by the prosecution and which have not been  
14 offered in evidence. Some of these documents are in  
15 the possession of the prosecution and we have been  
16 advised, or rather informed, and believe that they are  
17 not to be used. We therefore respectfully request  
18 some suggestion from the Court with reference to that  
19 matter so that in the event that we may abide by any  
20 determination that the Court might make with respect  
21 thereto.

22 THE PRESIDENT: My order under discussion  
23 applies only where the defense is seeking the assistance  
24 of the Tribunal to get a witness or to get a document.  
25 That appears on the face of the order itself, which

1 shows that it is based on Section III, Article 9,  
2 paragraph (e) of the Charter. That provision of the  
3 Charter states that: "An accused may apply in writing  
4 to the Tribunal for the production of witnesses or of  
5 documents."

6 Now, in an ordinary criminal trial the accused  
7 knows when he sees the indictment what witnesses he  
8 needs; but as the trial develops the need for further  
9 witnesses sometimes becomes apparent. The accused  
10 first knew of the contents of this Indictment on the  
11 29th of April last. On that day it was served on them  
12 in Sugamo Prison. However, as I said, as the trial  
13 develops the accused may be advised to call further  
14 witnesses so there will be nothing to prevent the  
15 accused here, in the light of the evidence, from  
16 approaching the Court for further witnesses.

17 We are here following the procedure adopted  
18 in Germany of which we have heard no condemnation to  
19 date. This may be a case in which the accused cannot  
20 say with any great certainty just what witnesses they  
21 will require until all the evidence is heard, but they  
22 must have a fair idea of the witnesses that will be  
23 useful to them even now.

24 Now, as to the documents in possession of  
25 the prosecution which the prosecution do not intend to

1 use in evidence, so far as they are material to the  
2 defense, if the prosecution refuses to disclose them  
3 or to deliver them up to the defense, the defense  
4 may seek the assistance of the Court under the pro-  
5 visions of the Charter to which I refer in my order.  
6 That, however, would not extend to copies of documents  
7 made by the prosecution for their own use but some  
8 arrangement would certainly be made about the use of  
9 copies by the defense if the Court saw fit to order  
10 the original to be made available to the defense.  
11 However, we will reserve consideration of the matter  
12 which was placed before us this afternoon.

13 It has been suggested to me by a Member of  
14 the Court that on subsequent applications the defense  
15 might be required to show cause why the application  
16 was not made at an earlier date.

17 Mr. Williams.

18 MR. E. WILLIAMS: Mr. President and Members  
19 of the Tribunal, I have been informed that some question  
20 arose during the morning in respect of the lack of  
21 certification of some documents obtained from the  
22 Japanese Government. In the division of the work of  
23 the International Prosecution Section, one of the tasks  
24 assigned to me was that of determining whether documents  
25 should or should not be certified.

1 THE PRESIDENT: I am afraid Mr. Oneto will  
2 have to argue that, Mr. Williams. It arose in a matter  
3 this morning of which he had the conduct. If we heard  
4 you we would hear two counsel about that and we have  
5 no intention of doing that on principle.

6 MR. WILLIAMS: I was going to call the Court's  
7 attention to the fact, if I might, that while this  
8 matter arose this morning it affects a great deal more  
9 than the subject that is being presented by Mr. Oneto  
10 and ask the Court's permission to address the Court.

11 THE PRESIDENT: No, we have no intention of  
12 allowing that. Of course, my colleagues might take a  
13 different view. I do not think so; I have discussed  
14 this with them.

15 (Whereupon, an off-the-record  
16 discussion was had by the Members of the  
17 Tribunal.)

18 THE PRESIDENT: We have decided to hear  
19 Mr. Oneto on the point.

20 MR. ONETO: This morning I have had the honor  
21 to submit to the Court document No. 1411.

22 THE PRESIDENT: It is admitted on the condi-  
23 tion stated, that the certificate be produced subse-  
24 quently and on the usual terms otherwise.

25 MR. ONETO: I must inform the Court that on

1 the question of presentation of some documents I  
2 have received, though it was without certification,  
3 from the qualified servant of the prosecution, I have  
4 been told that concerning official documents, in  
5 conformity with the Charter, some of the documents  
6 would not need these papers and that was why I pre-  
7 sented some documents this morning to the Court  
8 without their certificates. Reserving the justifica-  
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1 tion that I will later present to the Tribunal, I  
2 respectfully request that I be allowed to read this  
3 document.

4 THE PRESIDENT: May I make myself clear if  
5 I can. The two documents which this morning were  
6 tendered without certificates have now been admitted  
7 conditionally on the usual terms, the condition being  
8 the production of a certificate in each case later.

9 Please call out the numbers.

10 MR. ONETO: No. 1411 and No. 985-A.

11 THE PRESIDENT: Mr. Mantz, will you call  
12 them? You have the documents.

13 CLERK OF THE COURT: Prosecution's document  
14 No. 1411, which has been given exhibit No. 618-A, and  
15 prosecution's document No. 985-A, which has been given  
16 exhibit No. 620.

17 MR. TAVENNER: I will read exhibit 618-A:

18 "Excerpts from 'Business Report of South  
19 Seas Section in 1940.'

20 "Section 3. The embargo on supplies aiding  
21 the Chiang regime and the matters concerning the  
22 occupational forces in French Indo-China.

23 "(1) The suspension of transportation of  
24 munitions via French Indo-China and the dispatch of  
25 the Japanese observation party.

1 "Despite the notification forwarded to us  
2 by the French Indo-China authorities in October, 1937  
3 stating her decision to suspend the transportation of  
4 weapons to China via French Indo-China, according to  
5 information obtained the transportation of weapons  
6 was continued as before, therefore we often filed  
7 protests against the French. However, every time the  
8 French denied our information always giving us decep-  
9 tive answers saying that there was no change in their  
10 policy to stop transportation and the transportation  
11 of weapons now being continued was the fulfillment of  
12 a contract made between China prior to 15th July 1937.  
13 Japan, therefore, resolved early in 1939 to resort to  
14 force to carry out the interception of the transporta-  
15 tion of weapons.

16 "However, since the outbreak of the European  
17 War, France's attitude toward Japan showed some im-  
18 provement. As she showed signs of her desire to adjust  
19 the relations between Japan and France by solving the  
20 pending questions, we, therefore, replied that we would  
21 negotiate to adjust the diplomatic relations provided  
22 France would be ready to stop the transportation of  
23 munitions, gasoline, trucks and all other commodities  
24 which might increase the resisting power of the CHIANG  
25 regime via French Indo-China. France (A) denying our

1 information, stated that she had prohibited the trans-  
2 portation of genuine weapons and ammunitions, though  
3 she had no legal obligation to do so, and actually  
4 there was no truth of the transportation of the said  
5 supplies and, (B) not responding to our desires stated  
6 it regrettable that Japan should demand France to  
7 stop the transportation of such commercial goods as  
8 gasoline, trucks and others despite the fact that there  
9 was no declaration of war between Japan and China ever.  
10 Japan replied that (a) our information was obtained  
11 through a reliable source reveals that weapons and  
12 ammunitions have sometimes been sent to CHIANG KAI-SHEK  
13 by way of French Indo-China and that a large amount of  
14 such munitions other than genuine weapons and ammunition,  
15 as gasoline, trucks and airplanes have been transported.  
16 (b) The Japanese forces in the KWANGSI Campaign cap-  
17 tured a large amount of arms, ammunition, gasoline and  
18 other munitions apparently from French Indo-China,  
19 (c) the amount of the transportation by the YUNNAN  
20 railway approximately doubled after the interception  
21 of the NANNIN route as a result of the KWANGSI Campaign.  
22 (d) In modern warfare, gasoline, trucks and airplanes  
23 like weapons and ammunition are munitions that increase  
24 the fighting power (e) in the CHINA incident, Japan  
25 refrained from placing any limitation upon the ships

1 and cargoes bound for French Indo-China in view  
2 of the friendly relations between Japan and France,  
3 however, France in the European War in which she was  
4 a belligerent, afflicted upon us great losses in the  
5 various measures toward Japanese ships bound for Europe  
6 by extending the items of contraband of war. (f) The  
7 French authorities have roused resentment among the  
8 Japanese people by declaring they would aid CHIANG  
9 KAI-SHEK at the League of Nations and on various other  
10 occasions, and actually conducted acts of assisting  
11 CHIANG by transporting munitions and granting railway  
12 loans. Japan furthermore, notified France of her  
13 desires that she recognize the present situation of  
14 the large-scale hostilities existing between Japan  
15 and China, and that France voluntarily take resolute  
16 steps, to stop the transportation of war materials  
17 from the political standpoint and the general situation  
18 irrespective of legal argument as to the existence of  
19 a legal obligation to stop the transportation of mun-  
20 itions or the existence of a declaration of war. As  
21 France, however, reiterated what they had said before  
22 and did not show any sincerity to achieve a political  
23 solution of the matter, Japan was obliged because of  
24 strategic necessity to bomb the YUNNAN Railway in  
25 Chinese territory since the end of 1939. Concerning

1 the bombing France filed protests against Japan  
2 several times and demanded compensation. Japan,  
3 however, answered that the bombing was a self-defense  
4 measure and that as Art. 24, clause 2 of the Sino-  
5 Japanese agreement concluded in 1903, concerning the  
6 construction and management of the YUNNAN Railway,  
7 stipulates that the railway shall lose its neutrality  
8 in the case CHINA becomes belligerent, there is no  
9 necessity for Japan to indemnifying France.

10 "Before long, the repair of the YUNNAN  
11 Railway was completed and freight transportation became  
12 possible, thereby necessitating our Army to once more  
13 resort to armed force. However, as negotiations for  
14 the adjustment of general diplomatic relations between  
15 Japan and France had at last just begun, it was pre-  
16 ferred that France be persuaded to suspend the trans-  
17 portation of war materials to CHIANG voluntarily,  
18 instead of resorting to brute force. Then, in the  
19 middle of March, 1940, Japan proposed that France  
20 suspend the transportation of arms, gasoline and  
21 trucks destined for CHIANG KAI-SHEK during the time  
22 when the negotiations to adjust the general diplomatic  
23 relations between Japan and France were being conducted  
24 and Japan shall also refrain from using military force  
25 during that period, and continued negotiations.

1 France, however, failing to appreciate Japan's  
2 efforts showed such an undesirable attitude as to  
3 say that though she shall suspend the transportation  
4 of gasoline and trucks during the month of March,  
5 thenceforth, she shall decide on the matter of  
6 transportation in relation with other important  
7 problems. Therefore, Japan concluded that it would  
8 be impossible to continue further negotiations any  
9 longer even as a temporary measure as long as France  
10 adheres to such an attitude and instructed the  
11 Japanese Ambassador in France to notify the French  
12 authorities to the above effect. Thus the negotiations  
13 were suspended for a while (during which period the  
14 transportation of munitions to CHIANG was still con-  
15 tinued while Japan also bombed the YUNNAN Railway late  
16 in April). In the meantime, with the advance of the  
17 German attack against France, the French Government,  
18 since the latter part of May, asked Japanese companies  
19 for airplanes and large amounts of various ammunition.  
20 Japan replied that she would endeavor to meet France's  
21 desire as far as possible if France would accept Japan's  
22 request of the pending Franco-Japanese problems, es-  
23 pecially the suspension of transportation of munitions  
24 to CHIANG via French Indo-China. Since, the war sit-  
25 uation in France proper showed a rapid progress, Japan  
notified France on June 19 through the French Ambassador  
in TOKYO, Mr. HENRY that Japan could no longer overlook

1 the continuation of the transportation of munitions  
2 to CHIANG via French Indo-China, because of the  
3 growing dissatisfaction toward France among the  
4 Japanese people. The Ambassador replied that the  
5 Governor-General of French Indo-China decided on 17th  
6 June to suspend with his own authority the transporta-  
7 tion of not only arms and ammunitions to CHIANG but  
8 trucks and gasoline. When we requested the acceptance  
9 of our proposal concerning the corroboration of the  
10 said decision, the Ambassador answered that as he had  
11 advised the Governor-General to enforce the complete  
12 blockade on the frontier between French Indo-China  
13 and China, the Governor-General had decided to cor-  
14 roborate this, and also decided to accept the dispatch  
15 of military experts for inspecting the circumstances  
16 regarding the transportation of supplies via French  
17 Indo-China.

18 "Consequently, Japan requested France to  
19 maintain strict control over the activities of China,  
20 and the Chinese who appear to be planning the conceal-  
21 ment and smuggling of stored supplies in French  
22 Indo-China as a result of the Governor-General's  
23 decision, and moreover requested that Major OBANA in  
24 HANOI who was to be sent as a temporary expedient prior  
25 to the arrival of the military experts in order to

1 hurriedly inspect the circumstances of the suspension  
2 of transportation of munitions, be afforded necessary  
3 facilities.

4 "Simultaneously, on June 22, Japan proposed  
5 to France the following three items pertaining to the  
6 dispatch of the Japanese observers.

7 "(a) As we desire to dispatch thirty  
8 military experts and ten Foreign Office officials  
9 (three of whom shall be the staff members of the  
10 Japanese Consulate-General in HANOI), and several  
11 interpreters to French Indo-China to inspect the cir-  
12 cumstances the suspension of the transportation of  
13 supplies, it is desired that an easy entrance and all  
14 necessary facilities for execution of their respective  
15 duties be afforded to the dispatched personnel and  
16 those liaison officials who may be sent to French  
17 Indo-China at any time from Japan or China.

18 "(b) As we desire to dispatch an advance  
19 party of about seven army and naval officers and non-  
20 commissioned officers from China by a mine-sweeper,  
21 it is requested that similar facilities are afforded  
22 them.

23 "(c) The list of the materials that Japan  
24 will request of the French Indo-China authorities to  
25 suspend the transportation to China, will be decided

1 after the inspection on the spot by the said party,  
2 and up to that time, the French Indo-China authorities  
3 are requested to continue a complete blockade of the  
4 frontier between French Indo-China and China.

5 "France accepted the above requests and  
6 the inspectors were dispatched as per schedule.

7 "Subsequently Japan requested France that:

8 (a) As far as the transportation of supplies for  
9 China via the leased territory of the Bay of KWANGCHOW  
10 are continued, the effects of the measures taken by  
11 France to prohibit the transportation of supplies to  
12 China will be greatly diminished, therefore Japan had  
13 previously requested the prohibition of the above  
14 route. Also although it is expected that steps to  
15 prohibit the above have been duly taken, Japan desires  
16 to dispatch two or three Imperial Japanese Naval  
17 officers and non-commissioned officers to that area  
18 from China in order to inspect the measures of prohibi-  
19 tion, as well as liaison personnel who will be sent  
20 at any time from China in small war vessels, it is  
21 desired that easy entrance and all facilities necessary  
22 in executing their duties be afforded them. (b) The  
23 French Indo-China authorities are desired to ban the  
24 importation of all materials from China for a period  
25 of one month starting 7 July.

1 "The above mentioned requests were also  
2 accepted by France.

3 "(2) The advancement of Japanese forces  
4 into northern French Indo-China.

5 "The observation party previously mentioned  
6 consisting of forty officials of the Army, Navy and  
7 Foreign Ministry headed by Major-General NISHIHARA  
8 arrived at Hanoi on the 29th June and started their  
9 work. The French authorities enforced the blockade  
10 on the frontier with sincerity."

11 THE PRESIDENT: This is a convenient break,  
12 but before we recess, if it so happens that this ques-  
13 tion of the absence of certificates applies to several  
14 prosecution sections or to more than one, it may be  
15 the Tribunal would be prepared to hear the Chief  
16 Prosecutor or some person nominated by him, or the  
17 Tribunal may insist upon each prosecutor putting his  
18 own case.

19 We will recess now for fifteen minutes.

20 (Whereupon, at 1445, a recess  
21 was taken until 1500, after which the pro-  
22 ceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The Tribunal is now  
2 resumed.

3 MR. WILLIAMS: Mr. President, I understand  
4 that just before the recess you indicated that if  
5 some person had been designated by the Chief of Coun-  
6 sel to present the question of the certificates --

7 THE PRESIDENT: Now, Mr. Williams, what I  
8 said was that the Tribunal might be prepared to take  
9 a certain course; but, I have not discussed the matter  
10 with the Members of the Tribunal yet. It is too early  
11 to appear on this yet.

12 MR. WILLIAMS: Then may I make this request?

13 THE PRESIDENT: Well, do not open the matter.  
14 We will never close it.

15 MR. WILLIAMS: I want permission to take it  
16 up tomorrow morning, if your Honor please.

17 THE PRESIDENT: I will refer that to Members  
18 of the Tribunal, Mr. Williams.

19 MR. TAVENNER: I will continue reading, your  
20 Honor, beginning at the top of page 8 (4).

21 (Reading): "(4) Although Japan originally  
22 desired the transportation of all supplies to CHIANG  
23 to be suspended, however, when that is difficult, at  
24 least the suspension of the transportation of those  
25 articles mentioned below, which are already listed as

1 'contraband of war' by France is desired:" --

2 THE PRESIDENT: We thought you were on page 6.

3 MR. TAVENNER: Page 8.

4 THE PRESIDENT: But you have gone over to  
5 page 8.

6 MR. TAVENNER: I beg your pardon. Correction:  
7 I will begin reading at the top of page 6.

8 (Reading):

9 "The bombing of the passenger-train on the  
10 YUNNAN Railway. Regarding the negotiations adjusting  
11 the diplomatic relations between Japan and France,  
12 which have been continued since last year, we were  
13 studying various counter measures.

14 "At that time when the YUNNAN-Railway was  
15 bombed for the second time by our naval planes, a  
16 bomb made a direct hit on a passenger train, which  
17 happened to be on the railway killing five French (two  
18 women and two children) and killing or injuring many  
19 ANNANESE and Chinese. The French Prime Minister re-  
20 quested the Japanese Ambassador in Paris, Mr. SAWADA,  
21 to make a satisfactory explanation as to this incident,  
22 saying that, since 1937 the French Government had never  
23 transported arms upon the honour of France, however  
24 notwithstanding this, Japan had often bombed the rail-  
25 way without giving any evidence of the transportation

1 of arms, and moreover, to even injure the lives of wo-  
2 men is very regrettable from the standpoint of our  
3 diplomatic relations. On the assumption that he was  
4 not in a position to explain the incident since he had  
5 not yet received any official report, the Ambassador  
6 repeatedly explained Japan's policy toward the bombing  
7 of the YUNNAN-Railway and suggested the necessity of a  
8 voluntary suspension of all transportation of supplies  
9 to CHIANG via the YUNNAN-Railway to avoid the recurr-  
10 ence of such an unfortunate incident.

11 "Moreover, from the outset the French pub-  
12 licized that the bombing of the YUNNAN-Railway was con-  
13 ducted by the forces on the spot, not according to the  
14 orders from headquarters, and articles concerning the  
15 bombings appeared in the SHANGHAI newspapers, irritat-  
16 ing the feelings of the Japanese forces on the spot.  
17 Therefore, Ambassador SAWADA was instructed to explain  
18 to the French authorities that the bombings of the  
19 YUNNAN Railway were not, as already often explained,  
20 only the activities of the forces on the spot, and  
21 hitherto it was decided that as a principle the bomb-  
22 ing target was limited to railways or railway bridges,  
23 and so long as trains were not used for a military  
24 purpose they would not be bombed; this policy was ad-  
25 hered to by the forces on the spot. However, the

1 bombing of the train was due to a mistake resulting  
2 from bombing in very difficult conditions while re-  
3 sisting heavy defense-fire from enemy fighter planes  
4 and the anti-aircraft batteries on the ground in that  
5 neighborhood. None of the pilots had admitted the ex-  
6 istence of a train in the vicinity of the targets, only  
7 later on, after examining the aerial photograph with  
8 magnifying glasses that an object similar to that of  
9 a stationary train in the direction of the tunnel to  
10 the north of the central part of the bridge, was dis-  
11 tinguished.

12 "On February 5th, the French Ambassador in  
13 TOKYO called on vice-Minister of Foreign Affairs, TANI,  
14 and handed the following protests:

15 "(1) The French Government shall lodge a  
16 protest against the act of damages afflicted upon  
17 French property through the recent bombing of the  
18 YUNNAN-Railway.

19 "(2) As a result of the bombing the casual-  
20 ties known are 40 killed (including 5 Frenchmen) and  
21 84 ANNANESE, and Chinese wounded.

22 "(3) The French Government shall reserve the  
23 right to demand compensation as soon as the circumstan-  
24 ces of the damages are clarified.

25 "Simultaneously stated that this incident will

1 have a very bad influence on American public opinion,  
2 and similarly French opinion is greatly enraged. In  
3 reply vice-Minister, TANI, stated that as details  
4 have not yet been clarified Japan is ready to take  
5 fair and reasonable measures, after investigation,  
6 however, according to the information obtained, it is  
7 said that there are traces of the train being used for  
8 military purposes, and citing the following points,  
9 called attention of the Ambassador:

10           "(1) As far as the transportation of munit-  
11 ions and other supplies are continued, from the stra-  
12 tegic standpoint, Japan shall be obliged to bomb the  
13 YUNNAN-Railway.

14           "(2) France seems to be restrained by the  
15 'non-existence of a declaration of war', however,  
16 Britain has formally recognized that large-scale hos-  
17 tilities are going on between Japan and China, and  
18 though for the purpose of improving Franco-Japanese  
19 relation, discussions as to the separate problems which  
20 successively occur (for example, the joint investiga-  
21 tion of the booty in KWANGSI) have been held, but with  
22 little avail. Therefore, it is necessary that France,  
23 too, like Britain, recognize the existence of hostili-  
24 ties between Japan and China and considering all prob-  
25 lems from this standpoint we believe that today is the

1 time to adjust the diplomatic relations between the  
2 two countries, basing such on a broad minded view-  
3 point.

4       "(3) Although France has hitherto advo-  
5 cated her neutrality toward the China Incident, the  
6 Japanese people believe that France is adopting a  
7 pro-CHIANG policy in consideration of her official  
8 announcements at the League of Nations and at other  
9 places, or in her actions of granting credit to  
10 China, aid given in the construction of railways in  
11 China and the transportation of supplies to CHIANG,  
12 etc. Japan shall not ignore France's considerations  
13 toward her domestic relation or the third-countries  
14 relations, and not request France's official announce-  
15 ment as to the suspension of the pro-CHIANG activities.  
16 Japan will be satisfied with the actual suspension of  
17 all such pro-CHIANG activities, such as refraining  
18 from the repair of the damaged railway and report to  
19 CHIANG Kai-shek or the third powers that the repair of  
20 the railway is impossible, and so forth.

21       "(4) Although Japan originally desired the  
22 transportation of all supplies to CHIANG to be sus-  
23 pended, however, when that is difficult, at least the  
24 suspension of the transportation of those articles  
25 mentioned below, which are already listed as 'contra-

band of war' by France is desired:

"(1) Arms and ammunitions.

"(2) Airplanes and parts thereof.

"(3) Trucks, other automobiles and parts thereof.

"(4) Gasoline and other oils.

"(5) Metals, machines and other metal goods.

"(6) Locomotives, freight cars and railway materials.

"(7) Chemicals.

"(5) If France takes effective and appropriate steps toward our demands Japan will negotiate with the military authorities to stop the bombing of the YUNNAN Railway and moreover there is ground for consideration of not only the maintenance but also the promotion of French interests in both the new Chinese Government's and Japanese Army's sphere of influence. In reply Ambassador HENRY stated that the Japanese Government seems to be recognizing the actions of the militarists one after another, however, such an attitude will have a bad influence on American public opinion and that despite the denial of the French Government, the Japanese authorities make announcement as though the French authorities were transporting munitions to the CHIANG regime, however, it is regrettable, that the

1 Japanese authorities do not present any evidence. Vice-  
2 Minister TANI retaliated that, the former was without  
3 basis, and as to the latter, our information was ob-  
4 tained through reliable sources and according to in-  
5 formation from the various sources we are aware even  
6 of the existence of an entente concerning the supply  
7 of goods between France and China.

8 "Due to the comparatively slight damages of  
9 the railway itself and the few casualties among  
10 French nationals as well as the maintenance of the  
11 policy by the French Government to avoid the aggra-  
12 vation of the public opinion toward Japan, the bomb-  
13 ing of the YUNNAN-Railway in the past did not become  
14 a problem of public interest in France, however, as  
15 French nationals, especially women, were killed public  
16 discussion of the problem has been permitted. But in  
17 handling this matter the Government seems to have un-  
18 officially instructed the newspapers the following  
19 points:

20 "(1) It is surprising that the bombings were  
21 repeated while negotiations concerning the YUNNAN  
22 Railway were being held between the Japanese author-  
23 ities and not only French Indo-China, but also the  
24 French home Government.

25 "(2) According to the impression obtained

1 in TOKYO, the bombings seem to have been conducted by  
2 the unilateral decision of the forces on the spot.

3 "(3) However, the French Government in-  
4 tends to maintain the hitherto friendly relations be-  
5 tween France and Japan."

6 I will begin reading now at the break in  
7 the page near the middle on page 9:  
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1                   "Concerning this matter, the Japanese Am-  
2   bassador, Mr. SAWADA, called on Vice-Minister, Mr.  
3   FEDIE and stated that as long as the transportation  
4   of the munitions is continued Japan shall be obliged  
5   to bomb the railway, and that Japan heartily hopes  
6   France will recognize, like Britain, the existence  
7   of hostilities between Japan and China, and to stop  
8   at least the transportation of those above-mentioned  
9   items which were pointed out by Japanese Vice-Minister,  
10   TANI. Vice-Minister, FEDIE replied that although the  
11   French authorities had already voluntarily stopped  
12   the transportation of arms, it is unreasonable of Japan  
13   to make such a demand equal to suspension of all traf-  
14   fic on the railroad. As this was only a repetition  
15   of the old argument, the Japanese Ambassador empha-  
16   sized that it was not the time to adhere to legal  
17   theories, and of the necessity for France to make a  
18   decision for a political solution. The Vice-Minister,  
19   Mr. REDIE, replied that in view of the fact that in  
20   the past France had persevered and only being flatly  
21   refused by Japan (literally translated as hit on the  
22   head), and out of consideration of domestic opinion,  
23   it is impossible to make such a resolution, in any  
24   case, France will reconsider the matter on receiving  
25   a formal reply from the Japanese Government as to

1 their recent proposal.

2 "On February 20th, vice-Minister, TANI,  
3 asked the French Ambassador in TOKYO, Mr. HENRY, to  
4 visit him and handed him the following memorandum:  
5 'Railway bridge No. 7 was the main target of the  
6 bombing on February 1st and the bombing of the train  
7 was by no means planned from the outset. The bombing  
8 on that day was conducted under the most difficult  
9 conditions, of running the risk of unfavourable air  
10 currents and averting the attacks of enemy planes  
11 and anti-aircraft gun barrage from an altitude of  
12 3,800 meters. And due to the railway-bridge, other  
13 constructions and shadows, none of the pilots were  
14 able to identify the train which was stationary on  
15 the railway-bridge at that time. It was entirely an  
16 accident that the bomb dropped by a plane of the  
17 Imperial Armed Forces hit the train, however, the  
18 Imperial Japanese Government regrets that as a  
19 result of the bombing there were French and Annamese  
20 casualties, and is willing to pay a reasonable sum  
21 of condolence money to the French nationals.'

22 "On May 7, Ambassador HENRY replied by let-  
23 ter that upon notifying the Governor General of the  
24 decision of the Japanese Government, he instructed him  
25 to request a compensation of 175,030 pesos (120,000  
pesos for the 5 French nationals, 55,030 for the Indo-

1 China victims), explaining that in determining the  
2 above, the social-standing of the victims were con-  
3 sidered, and to obtain a thorough investigation sev-  
4 eral months have been required; and at the same time  
5 presented an explanatory note."

6 I will omit reading the next paragraph.

7 "(6) The bombing by the Japanese plane in  
8 HAIPHONG.

9 "At the time of the entry of the Japanese  
10 forces into French Indo-China, on September 26th a  
11 Japanese bomber dropped 4 bombs on the city of  
12 HAIPHONG killing 15 and injuring 18 persons and  
13 causing other material losses. On October 7th the  
14 Councillor of the French Embassy in Tokyo notified  
15 the Chief of the 3rd section of the Eurasian Bureau,  
16 Mr. ISHIZAWA the contents of the case. However, as  
17 it became evident that this bombing was due to the  
18 carelessness of the pilots, the forces on the spot  
19 expressed their regret and settled the matter by pay-  
20 ing 33,000 peso as compensation money.

21 "(5) The dispatch of a cruiser of the Imperial  
22 Japanese Navy to SAIGON.

23 "A telegram was received from the Consul  
24 General in HANOI Mr. SATOH stating that to assert  
25 Japan's power in southern French Indo-China and to

1 control anti-Japanese activities by the Chinese resi-  
2 dents in the SAIGON district, to facilitate the  
3 purchasing of rice and to prevent manoeuvres by Bri-  
4 tain and America, an Imperial Japanese cruiser was  
5 scheduled to be despatched to SAIGON (expected around  
6 the middle of Dec.). Upon receiving approval from  
7 the Vichy Government as the Governor General had al-  
8 ready agreed to it as a result of negotiations be-  
9 tween the organ SUMIDA who had previously planned the  
10 despatch of a Japanese warship to SAIGON and the Govern-  
11 ment-General and using this opportunity an exchange of  
12 good will was going to be held for about one week.  
13 However, later on the Government-General informed the  
14 organ SUMIDA that they had received instructions from  
15 the Vichy Government that this matter should be  
16 negotiated between the Japanese Ambassador in France  
17 and the French Home Government, and in view of the  
18 current situation believe it to be inappropriate to  
19 enforce the program immediately and that they wish to  
20 postpone it for awhile. As the organ SUMIDA accepted  
21 this proposal, the plan was naturally not realized.

22       "(7) The dispatch of the French Indo-China  
23 military delegation to America.

24       "The French Indo-China authorities dis-  
25 patched a military delegation consisting of infantry

1 brigade commander, Colonel JACOMY, Major PERITZRON  
2 and two others, to the U. S. in order to obtain sup-  
3 port of America to resist Japan. The party arrived  
4 at San Francisco on July 21st. When it became ap-  
5 parent that they were endeavoring to purchase 200  
6 military planes etc., the Chief of the Third section  
7 of the Eurasian Bureau Mr. ISHIZAWA invited the Coun-  
8 cillor of the French Embassy in Tokyo, Mr. FAN on  
9 December 3rd and orally proposed that although Japan  
10 appreciates the efforts taken by the French Home  
11 Government to maintain and promote friendly relations  
12 toward Japan, it is most unwarrantable for the French  
13 Indo-China authorities who are supposed to be under  
14 the control of the Home Government, to conduct such  
15 anti-Japanese manoeuvres, so in the future ask them  
16 to refrain from such unfriendly

1 "acts. Simultaneously he instructed the Charge  
2 d'Affaires to the Vichy Government. Mr. HARADA  
3 to propose the same to the French authorities."

4 I shall omit reading the rest of that page  
5 and begin at the top of the following page, which is  
6 13a

7 "(3) The frontier dispute between Thailand,  
8 and French Indo-China.

9 "After the revolution of 1932 and 1933 in  
10 Thailand, the racial consciousness of the people be-  
11 came outstanding and the re-construction movement in  
12 the country developed into the demand of the recovery  
13 of natural power or lose territory.

14 "Furthermore, in June, 1939 the name of  
15 Siam was changed to Thailand, and the movement of the  
16 recovery of lose territory developed more and more.  
17 In order to maintain neighborly friendship between  
18 Thailand and French Indo-China, the principle for  
19 opening negotiations about the non-aggression pact  
20 was recognized in October of the same year and on  
21 July 12th, 1940 the French-Thai non-aggression  
22 pact was concluded, so both governments appointed  
23 its commissioner to discuss the revision of the bor-  
24 der of the Mekong River which was a condition of the  
25 pact. However, the French situation was extremely

1 weakened owing to the defeat in the war against Ger-  
2 many in Europe, meanwhile, Japan's predominant inter-  
3 ests in political and economic circles in East Asia  
4 were recognized by the MATSUOKA-HENRY Agreement  
5 concluded on Aug. 30, 1940. Thailand, stimulated by  
6 a sudden and serious agitation and change in intern-  
7 ational relations demanded in a memorandum dated  
8 13 Sept., as a condition for the exchange of rati-  
9 fication of the non-aggression treaty, the revision  
10 of the Mekong River frontier according to the deep-  
11 est part of the river principle stipulated by inter-  
12 national law, and the recognition of the Thai-French  
13 Indo-China boundary along the R. Mekong north and  
14 south of Cambodia, by insisting that the circum-  
15 stances in French Indo-China were no longer normal.  
16 This demand meant the cession of the areas along the  
17 right bank of River Mekong across from Luang Pro-  
18 bang and Bakuse (Note: ceded from Siam to France by  
19 1904 Treaty) to Thailand. Thailand, in addition,  
20 expressed her hope to obtain a guarantee from the  
21 French that the territory of Cambodia and Laos  
22 would be returned to Thailand in the case when France  
23 renounced her sovereignty over Indo-China.

24 "The French Government replied in a memo-  
25 randum dated 19th Sept.,, stating that although she

1 will agree to establishing a committee for the res-  
2 olution of the pending questions, she will not be  
3 able to respond to any demand that may alter the  
4 territorial integrity of French Indo-China as there  
5 has been no change in the status thereof; thus flatly  
6 refusing Thai's demands. Therefore the Thailand  
7 Government again submitted a memorandum on the 28th  
8 Sept, repeating the above demands advocating that  
9 the R. Mekong constituted an appropriate and natural  
10 boundary between French Indo-China and Thai. But,  
11 in regards to Laos and Cambodia on the left bank of  
12 the R. Mekong she was satisfied in 'demanding these  
13 when the position of French Indo-China is altered'.

14 "However, as the French authorities again  
15 refused these demands 11 Oct, asserting that they,  
16 like the previous demands were without legal or fact-  
17 ual basis, Thailand's recovery of lost territory  
18 through direct negotiations between French Indo-  
19 China and Thai were, for the time being discontinued.  
20 Thus the situation between the two countries became  
21 tense, as a result Thailand concentrated troops along  
22 the French Indo-China border, while French Indo-China  
23 also increased her garrisons along the frontier, the  
24 tension being so great that it was on the verge of  
25 explosion. But as the advance of Japanese forces

1 into French Indo-China being limited to the northern  
2 district, and the remainder of French Indo-China  
3 being guaranteed by Japan, the ensuing chaos which  
4 Thai anticipated did not occur, consequently Thailand  
5 and was placed in a dilemma, and compelled to depend  
6 on Japan in the achievement of her aims.

7 "In the beginning, Japan did not like  
8 Thai to adopt such an attitude regards the recovery  
9 of her lost territory when we were negotiating to  
10 enter French Indo-China. We did not think it the  
11 best policy to assist Thai in her demands for the  
12 recovery of lost territory immediately after we had  
13 entered French Indo-China and had to obtain the co-  
14 operation of the French. When in Sept and Oct 1940 the  
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1 Thailand Government sent a friendly delegation head-  
2 ed by Col. Plomu, Vice Minister of the Dept. of De-  
3 fense to sound our new foreign policy and intentions  
4 towards the problem of the recovery of lost terri-  
5 tory we adopted a neutral attitude.

6 "The problem of the entry in Thai being  
7 settled it was essential that Thailand cooperate  
8 with Japan and an economic agreement be concluded for  
9 the acquisition of rice and other important raw mater-  
10 ials and furthermore, to separate Thai from Britain in  
11 consideration of the southern problems of the future.  
12 As the U.S. and Britain have actively commenced man-  
13 oeuvres vis-a-vis Thailand, it is necessary that they  
14 are prevented. Therefore, it was decided that to take  
15 up the problem of the recovery of lost territory which  
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1 Thailand earnestly desired would be to draw her  
2 on our side, and at the same time would stimulate  
3 the French Indo-China problem. At the Four-Ministers  
4 Conference held on 5th Nov., it was decided to  
5 agree to assist Thailand in her recovery of lost  
6 territory and plan to make Thailand cooperate both  
7 politically and economically in the establishment  
8 of the New Order in East Asia. This was conveyed  
9 to Thailand. Following, at the second Four-Ministers  
10 Conference held on the 21st Nov, it was decided  
11 that when Thailand accepts our demands we would  
12 immediately assist her in the recovery of LUANG  
13 PRABANG and PAKUSE. When we proposed this to  
14 Thailand, Prime Minister PIBUN completely accepted  
15 our demands, therefore we decided to assist her  
16 in the recovery of lost territory.

17 "Prior to this FIC-Thailand relations  
18 had gradually become tense regarding the problem  
19 of lost territory. Both countries gathered troops  
20 on the border, and airplanes infringing upon another's  
21 territory became frequent, in the end, on the 28th  
22 Nov. both forces clashed in the LAOS border district.  
23 Since then, both sides have clashed on a small scale,  
24 consequently, making use of this opportunity /Foreign/  
25 Minister MATSUOKA unofficially stated to the French

1 Ambassador in Tokyo Mr. HENRY that he was with the  
2 intention of a peaceful arbitration in regards to  
3 the recovery of lost territory of 1904 which Thai-  
4 land desires. On the 19th Nov. the French Govern-  
5 ment replied that they greatly appreciate Japan's  
6 good intentions but from the standpoint of terri-  
7 torial integrity will not be able to make any  
8 cessions of territory. Consequently, we only  
9 requested the French Government to reconsider  
10 her unwise firm attitude as it would not be to  
11 her advantage, and observe the trend of events  
12 for awhile."

13 MR. ONETO: Mr. President, on the same  
14 conditions to which I have just read document No.  
15 1411 I ~~now~~ request permission of the Court to  
16 have read document No. 985A. This morning this  
17 document received exhibit No. 620.

18 THE PRESIDENT: Mr. Tavenner may read it.

19 MR. TAVENNER: I will read exhibit No.  
20 620.

21 (Reading)  
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1           "The circumstance surrounding the con-  
2 clusion of agreement between Japan and France con-  
3 cerning the advancement of the Japanese Army into  
4 French Indo-China.

5           "(July - September 15 Showa /1940/)

6           "2nd Section, South-sea Bureau of the  
7 Foreign Ministry.

8           "1. The political agreement/concluded/  
9 between Japan and French Indo-China by CATROUX, the  
10 Governor of the same.

11           "Statement regarding hopes for its con-  
12 clusion.

13           "Since the arrival in French Indo-China of  
14 the observation party/consisting/ mainly of our  
15 military experts who were sent in the latter part  
16 of June, 15 Showa /1940/ in order to inspect the  
17 situation of the embargo on materials intended for  
18 CHIANG KAI-SHEK via French Indo-China, the Governor,  
19 CATROUX, and the military commander of French Indo-  
20 China repeatedly announced with sincerity that they  
21 would enforce the said embargoes and cooperate in the  
22 execution of the duties of the observation party.

23           "According to the reports from the observ-  
24 ation personnel sent to various parts in French Indo-  
25 China, the embargoes were actually being carried out.

1 "The French Indo-China authorities furthermore  
2 endeavored to show us their good offices to the  
3 utmost by (a), prohibiting the inflow of Chinese  
4 exports into French Indo-China for one month starting  
5 July 7th, and (b), recognizing the construction of a  
6 submarine cable between HAIPHONG and HAIKOW, and the  
7 installation of wireless machines for our observation  
8 party.

9 "The Governor who thus assumed a con-  
10 ciliatory attitude toward us, furthermore proposed  
11 to Major-General NISHIHARA who was the head of the  
12 observation party that if Japan respects the  
13 territorial integrity of French Indo-China, she shall  
14 be ready from the military standpoint to conclude with  
15 Japan a defensive treaty against CHANG KAI-SHEK and  
16 shall be able to cooperate with Japan in a wider  
17 sphere than at present, and at the same time  
18 from the economic standpoint are prepared to adopt  
19 friendly measures in regard to Japan's expansion in  
20 enterprises and promotion of exports into French  
21 Indo-China, therefore request that a proposal for  
22 the conclusion of an agreement of the above nature  
23 be made by the Japanese Government. However, regard-  
24 ing the passage of the Japanese army and the use of  
25 aerodromes in French Indo-China to which our army  
attaches great importance in operations toward China,

1 he stated that these matters exceeded the authority  
2 of the Governor of French Indo-China and requested  
3 that negotiations be formally opened between the  
4 Japanese and French Government."

5 I will omit page 2 of the document and  
6 will read again beginning at the top of page 3.

7 "3. The decision of our policy toward  
8 this problem.

9 "Concerning this, our Government, after  
10 consulting with the army and navy, reached a  
11 definite plan to propose to the French /Government/  
12 but it was decided that after the approval of the  
13 succeeding Foreign Minister concrete negotiations,  
14 in regard to political and military agreements will  
15 be held mainly in Tokyo, while those of an economic  
16 nature, in HANOI. For the time being, in the later  
17 part of July, the following instruction draft and  
18 explanation draft were sent to consul-general  
19 SUZUKI in HANOI, and at the same time instructed  
20 Ambassador SAWADA to report to the French Govern-  
21 ment that Japan's attitude shall be determined  
22 as a result of the decision of the foreign policy  
23 by the new cabinet (on July 22nd, the YONAI cabinet  
24 was succeeded by the second KONOYE cabinet).

25 "(1) The instruction draft.

1 "Concerning the political, military and  
2 economic agreements with French Indo-China.

3 "I. Policies concerning the political,  
4 military and economic agreements with French  
5 Indo-China.

6 "As a result of consultation with the  
7 army and navy authorities, our Government has  
8 decided to propose to France the conclusion of  
9 political, military and economic agreements which  
10 contain the following contents and that the ne-  
11 gotiations concerning the political and military  
12 agreement will be held in Tokyo with Ambassador  
13 HENRY, and the negotiations for the economic  
14 agreement between you and the Governor of French  
15 Indo-China. Therefore, upon understanding the  
16 explanation detailed in the attached  
17 sheet you are to commence negotiations directly  
18 with the Governor, and in connection with the  
19 military agreement assist Major-General NISHIHARA  
20 in order to permeate our views to the Governor  
21 and endeavor to make him suggest to the home  
22 Government to accept our requests.

23 "II. The contents of the agreement.

24 "(1) The political and military agreement.

25 "(a) French Indo-China shall cooperate

1 with Japan in the construction of a New Order in  
2 East Asia and especially, for the time being,  
3 recognize the passage and the utilization of  
4 aerodromes (including the stationing of ground  
5 forces for guard purposes) in French Indo-China  
6 by the Japanese Army which has been sent for the China  
7 operations, and provide the various facilities which  
8 are necessary for the transportation of arms and  
9 ammunition and other materials of the Japanese  
10 army."

1           "(b) Japan shall respect the territorial  
2 integrity of French Indo-China.

3           "(2) The economic agreement.

4           "As stated in the attached sheet  
5 of the 'trade and economic negotiations' policy toward  
6 French Indo-China', which is in the possession of secre-  
7 tary HAGA (the 'business' stated in paragraph 1 in the  
8 said attached sheet includes banking business.)

9           "The Circumstances Surrounding the Conclusion  
10 of Agreement between Japan and France.

11           "(2) Draft of Explanations re Political and  
12 Military Agreement and Economical Agreement with French  
13 Indo-China.

14           "1. Considering the present position of  
15 France and the relation between Japan and France, the  
16 Japanese Empire expects to make French Indo-China, at  
17 this time, not only promise to co-operate in establish-  
18 ing the New Order of East Asia, and in settling the  
19 China Incident, but to also have her support the Empire  
20 in both military and economical lines by, at the moment,  
21 for the sake of the afore-mentioned object, accede to  
22 the Empire's demands forming the contents of the politi-  
23 cal and military agreement and economical agreement.

24           "Strategically, we shall place our demand be-  
25 fore French Indo-China as mentioned on attached sheet

1 number A-2, Article Ia, not only with the purpose of  
2 making her suspend the transportation of goods for the  
3 Chiang regime so as to destroy the Chungking Govern-  
4 ment, but from the standpoint of strategical necessity  
5 against the Chungking Government.

6           "(II) Considering the fact that French Indo-  
7 China has been eagerly wishing to secure a pledge from  
8 us regarding the integrity of her territory as she is  
9 apprehensive of the security of her territory, we  
10 shall prove her our just and upright attitude in giv-  
11 ing her our pledge to that effect in some appropriate  
12 manner, and that would be by declaring that we have no  
13 intention of invading the territory of French Indo-  
14 China, but that we shall not hold any responsibility  
15 for protecting the integrity of French Indo-China even  
16 from invasions by Third Powers. As an invasion of  
17 French Indo-China by a Third Power, however, would be  
18 an obstacle in establishing the New Order of East Asia,  
19 needless to say, we could not disregard such a matter,  
20 but the measures to be adopted against same shall be  
21 decided from our own independent standpoint.

22           "(III) In case France brings up the questions  
23 about Hainan Island, Spratley Islands, Hsi Sha Islands,  
24 etc., we shall, of course, reject her objection flatly  
25 by pointing out the fact that same have no direct

1 relationship with the present agreement relative to  
2 French Indo-China."

1           "(IV) Should, by any chance, the French  
2 Government reject all our demands which are to be the  
3 contents of the Political and Military Agreement,  
4 we shall, obviously, have no reason to give her any  
5 pledge respecting the integrity of her territory,  
6 but our attitude to be taken in such a case shall be  
7 decided after careful study by taking her attitude  
8 and the international situation, etc. into consid-  
9 eration.

10           "(V) The Economical Agreement is aimed  
11 at the establishment of economical co-operation  
12 between Japan and French Indo-China, and we have  
13 no intention of monopolizing the economical inter-  
14 ests relating to French Indo-China by totally ignoring  
15 the interests of France and other countries. As we  
16 shall demand being treated in the same way as France,  
17 the French people and French commodities in regard  
18 to matters pertaining to commerce (trade), enter-  
19 prises, and entry into the country, etc., we be-  
20 lieve that French Indo-China will show her disapproval  
21 on account of our foregoing demand exceeding the  
22 contents of ordinary commercial agreements, but, as  
23 we, on our part, are even going to pledge our res-  
24 spect for the integrity of French Indo-Chinese terri-  
25 tory by virtue of the Political and Military Agree-

1        ment, it will of course be necessary to realize our  
2        economic demands to the utmost limit. The negotia-  
3        tions for the Economical Agreement shall, in view  
4        of its nature, be conducted separately from the  
5        Political and Military Agreement.

6                "(VI)(a) As far as the persons in  
7        charge of the negotiations of the Political and  
8        Military Agreement are concerned, the conclusion of  
9        the agreement shall, as per the request of the Gov-  
10       ernor-General of French Indo-China, be effected  
11       after the negotiations between our government and  
12       Ambassador Henri at this place as this agreement  
13       includes such an important political problem as  
14       integrity of territory. As regards the formality,  
15       same shall be considered later on.

16                (b) The negotiations regarding the Econ-  
17       omical Agreement shall be conducted between Your  
18       Excellency and the Governor-General of French Indo-  
19       China, and on the satisfactory conclusion of same,  
20       in view of the relationship with the Privy Council,  
21       the formality shall be adopted whereby you shall  
22       have the Governor-General of French Indo-China noti-  
23       fy you onesidedly of the measures taken by the French  
24       Indo-China authorities, by his letter addressed to  
25       you, and you shall then only 'take note' of it.

1 "All further procedures shall be trans-  
2 ferred to this place, where proper steps shall be  
3 taken."  
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1 "4. Commencement of negotiations with  
2 France regarding a political and military agreement.

3 "(Meeting between Minister MATSUOKA and Am-  
4 bassador Henri on Aug. 1st. The first Franco-Japanese  
5 Meeting).

6 "On Aug. 1st, the Foreign Minister, MATSUOKA,  
7 asked Henri to visit him, and as a preliminary state-  
8 ment told him that the Japanese Government highly ap-  
9 preciated the measures/taken by the French authorities/  
10 to prohibit the transportation of materials to the  
11 CHIANG Regime through French Indo-China, and that  
12 Japan desired that the French Indo-China Government  
13 cooperate more extensively with Japan in political,  
14 military and economic affairs for the establishment  
15 of Japan's New Order in East Asia and to foster the  
16 settlement of the China Incident. MATSUOKA then  
17 requested as the concrete contents of the political  
18 and military cooperation, (note: as for the economical  
19 co-operation, refer to the separately drafted 'resume'  
20 of the negotiations on economic relations between  
21 Japan and French Indo-China) recognition of the  
22 passage through and the utilization of air-bases  
23 (including the stationing of ground forces to guard  
24 them) in French Indo-China by the Japanese Army which  
25 has been dispatched for operations against China, and

1 the provision of all necessary facilities for the  
2 transportation of arms, ammunition and other materials  
3 for the said troops. He also added that these re-  
4 quests were for the solution of the China Incident,  
5 and all measures being limited to within the scope  
6 necessary for the frustration of the CHIANG Regime,  
7 but not based on the intention to violate intrusion  
8 upon her territory. Furthermore, he stated that he  
9 wished to hold the negotiations at TOKYO as it was  
10 so important a political problem, and in considera-  
11 tion of the urgency of the affairs, desired to get  
12 the reply of the French Government/ as to this  
13 question/. To which the Ambassador replied that  
14 Japan's request was equal to demanding France, which  
15 was in a neutral position, to declare war against  
16 China, even though Japan herself had not done so yet.  
17 The Minister said that it was not a question of whether  
18 war was declared or not. France was requested to  
19 understand that hostilities were going on in large  
20 scale in China, and as for Japan, we have no inten-  
21 tion to violate French neutrality, but as this re-  
22 quest was a result of absolute necessity from the  
23 military standpoint it might happen that French neu-  
24 trality may be infringed upon even though it may be  
25 in formality, if France did not accept this request.

1 Therefore as Japan did not wish to have such an  
2 occurrence this proposal was made. Moreover, we want  
3 the French to accept our request with the same spirit  
4 that Japan accepted in 1907 Franco-Japanese agree-  
5 ment in spite of the benefits enjoyed by France in  
6 comparison with almost none on our side. This measure  
7 was not taken because Japan preferred it so, but as a  
8 result of circumstances she was obliged to make such  
9 a request. /Finally/. MATSUOKA explained that as  
10 in those days unexpected and strange things often  
11 took place, there is no necessity to think that to  
12 accept Japan's request must necessarily mean the  
13 declaration of war against China. The Ambassador  
14 answered that although there were several comprehensible  
15 reasons in MATSUOKA's explanation, Japan's requests  
16 as to French Indo-China were only becoming greater  
17 and greater each time, and it could not be estimated  
18 what requests Japan would make /of French Indo-China/  
19 if this request was accepted. Saying that he said he  
20 would transmit the request to the French Government,  
21 he took his leave."

22 I will omit reading the rest of page 5 and  
23 will begin at the top of page 6.

24 "Draft for the First Official Exchange  
25 letter regarding the political and military agreement

1 presented by Japan to the French Authorities.

2 (Conference between the Vice Minister of Foreign  
3 Affairs and the French Ambassador to TOKYO on Aug.  
4 9th and 10th).

5 "In accordance with the result of the con-  
6 ference between MATSUOKA, the Foreign Minister and  
7 'HENRY', the French Ambassador, and on Aug. 9th the  
8 Vice Minister of Foreign Affairs requested the am-  
9 bassador to visit him, and upon handing him the draft  
10 of this exchange of notes relating to political and  
11 military affairs which correspond to the attached  
12 documents Nos. 1 and 2, held the following meeting.

13 "The Vice-Minister: This request of ours  
14 is according to absolute military necessity, and in  
15 consideration of the urgency of the request wish to  
16 obtain your approval as quickly as possible.

17 "The Ambassador: As the Japanese request is  
18 so vague it would mean handing over a 'blank cheque'  
19 if it were accepted as it is.

20 "The Vice-Minister: The contents of the  
21 request is clear. It is clearly stipulated 'for  
22 operations against CHINA': there is nothing to be  
23 doubtful about.

24 "The Ambassador: There would be no end to  
25 requests being brought forward under the cloak of

1 operations. It is clear that our Government will not  
2 agree with it absolutely as it is, although I may  
3 transfer this draft to our government if you wish.

4 "The Vice-Minister: Do you mean that you  
5 are doubtful about the non-aggression of your ter-  
6 ritory?

7 "The Ambassador: No; As the draft stands  
8 at present there is a danger the utilization of air-  
9 fields and passage of troupes anywhere in French Indo-  
10 China may be requested. /Japanese Troops/ may land  
11 about 'Cambodia' Saigon. That is why I wish to  
12 state clearly the places /Japan/ desires.

13 "The Vice-Minister: This draft only stip-  
14 ulates the general principle and as to details they  
15 may decided through negotiations on the spot.

16 "The Ambassador: It is not desirable to  
17 leave the decision of details to negotiations on  
18 the spot. Although, according to your plan the Jap-  
19 anese Army makes repeated demands and Indo-China is  
20 disposed of, that could not be helped.  
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1           "The Vice-Minister: It is clearly stipulated  
2 'for operations against China'. Needless to say that  
3 we have no intention to abuse it.

4           "The Ambassador: In regard to this point the  
5 Foreign Minister has told me that, and I also under-  
6 stand that Japan has no such an intention, but as a  
7 practical question, if we agree to the agreement as  
8 it stands it cannot be said what requests, one after  
9 another, Japan may make. Nobody can guarantee this  
10 point. Upon reporting the result of today's conversa-  
11 tion to the Foreign Minister please reconsider the  
12 matter. As a result, if you desire me to send the  
13 draft as it is to my government, I will. However, I  
14 think that my government cannot accept it uncondition-  
15 ally.

16           "(Conversation regarding economical problems  
17 omitted).

18           "On the following day, the 10th, the Vice-  
19 Minister again requested Ambassador Henry to visit him,  
20 and presented him a revised draft which was rewritten  
21 as 'Passing through the Province of "TONKIN", French  
22 Indo-China, and utilizing aerodromes in the same  
23 province' in the draft of the exchange of notes of the  
24 9th; and the conversation exchanged was as follows:

25           "The Ambassador: Although the province of

1 'TONKIN' may be stipulated from our point of view, it  
2 is equal to issuing a 'blank cheque' for the province  
3 of TONKIN; and we will not be able to oppose anything  
4 the Japanese forces might do. That is not 'fair' play.  
5 If you are going to make such a request, please make  
6 yourself a little clearer.

7 "The Vice-Minister: Although I understand  
8 your feeling, as to what points will be passed or what  
9 air-fields are to be utilized, they are military secrets,  
10 therefore cannot be announced beforehand. No matter  
11 how earnestly you may insist, from the maintenance of  
12 secrecy of the operations against China, we will not  
13 be able to answer by any means.

14 "The Ambassador: Do you not trust the French  
15 Government?

16 "The Vice-Minister: This subject differs from  
17 the ordinary item of secrecy, for no one other than  
18 the military authorities are aware of it. However,  
19 when the Japanese Army enters French Indo-China, unless  
20 cooperation of the French Indo-China authorities is  
21 obtained matters will not progress smoothly, there-  
22 fore discussion as to the details will be held between  
23 the Japanese and French Indo-China authorities. For  
24 instance, if your excellency asks what places the  
25 Japanese Army will pass through or what aerodromes

1 they will utilize, and if your government state where  
2 is good or where is unsuitable, then this will make our  
3 military operations impossible; and the value of France  
4 accepting our request as a principle will become nothing;  
5 and in so far as it has been accepted as a principle,  
6 to ask of military secrets is going a little beyond  
7 the point, and if you still persist, it will be useless  
8 to argue with you anymore, so please transfer our re-  
9 quest as it is to your home government.

10 "The Ambassador: (After agreeing with the  
11 above). The Japanese request is one-sided.

12 "The Vice-Minister: That is natural. That is  
13 why we are able to negotiate. There is one thing to  
14 which we wish to draw your attention, that is Japan is  
15 doing her best to establish a new order in East Asia.

16 "The Ambassador: By the words a new order in  
17 East Asia, what do you concretely mean?

18 "The Vice-Minister: To make this clear a de-  
19 tailed explanation would be necessary, but if summed  
20 up in a few words, it means to establish a stable and  
21 dominant position of Japan in East Asia. As you know  
22 Japan and China should maintain friendly relations as  
23 neighborly countries, but as long as the Chiang Regime  
24 exists it forms an obstacle, and we are earnestly  
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1 overcoming all obstacles and pushing forward towards  
2 the downfall of the regime. And for this reason, hope  
3 for the co-operation of France. We believe that as to  
4 settling the China Incident as quickly as possible and  
5 establishing a permanent peace in East Asia, France  
6 has no objection. For that purpose it is necessary to  
7 annihilate the Chiang regime as quickly as possible,  
8 and wish to use French Indo-China as a means to achieve  
9 that objective./ If the Chiang regime had already been  
10 overthrown, we would not demand of you such a request.  
11 But as the same regime is continuing resistance, very  
12 reluctantly we have been obliged to make such a request.  
13 We hope you will especially consider this point.

14 "(By this explanation, it seemed the Ambassador  
15 understood well).

16 "Our present request is based on the above  
17 circumstances and have no intention at all of trans-  
18 gressing on French Indo-China territory. When you  
19 transfer this official draft, will you also transfer  
20 the several points I have explained. I hope that the  
21 French Government will accept our request as it stands.

22 "The Ambassador: (He agreed to transfer the  
23 above request)."

24 THE PRESIDENT: We will adjourn now until half  
25 past nine tomorrow morning.

1 (Whereupon, at 1600, an adjournment  
2 was taken until Thursday, 3 October 1946, at  
3 0930.)  
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1 (Whereupon, at 1630, an adjournment was  
2 taken until Thursday, 3 October 1946, at 0930.)  
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